



USAID | UKRAINE

FROM THE AMERICAN PEOPLE

Issuance Date: March 10, 2021
Questions Due Date and Time: March 22, 2021, 16:00 Kyiv Local Time
Closing Date and Time: April 30, 2021, 16:00 Kyiv Local Time

SUBJECT: Request for Proposal (RFP) No.: 72012121R00001
USAID Justice for All (J4A) Activity

The United States Government, represented by the U.S. Agency for International Development (USAID), Regional Mission for Ukraine and Belarus, is seeking proposals from qualified and eligible organizations to implement the **USAID Justice for All (J4A) Activity** as fully described in the attached RFP. USAID/Ukraine anticipates awarding one five (5) year, cost plus fixed fee, completion type contract as a result of this solicitation. The estimated range for the required services detailed in Section C of this RFP is between \$22 and \$24 million.

Proposals will be accepted from eligible organizations. The geographic codes for this procurement are 110 and 937. USAID will conduct this procurement through full and open competition under which any type of organization (including large or small commercial [for profit] firms, educational institutions or non-profit organizations) is eligible to compete. The North American Industry Classification System (NAICS) code for this acquisition is 541990 (All Other Professional, Scientific, and Technical Services).

Offerors are encouraged to read the entire solicitation. Special attention must be paid to Section L - Instructions, Conditions, and Notices to Offerors or Respondents, and Section M - Evaluation Criteria. Any questions related to this RFP must be submitted in writing via email to Ms. Marina Orlova at morlova@usaid.gov and me at dharter@usaid.gov by the time and date specified above. No questions will be accepted after the specified date. If questions are received, the responses to which affect the solicitation, or if any changes are made to the RFP, this solicitation will be amended. This RFP and any amendments to this solicitation will be issued and published on beta.SAM.gov. Offerors are encouraged to check this website periodically. USAID bears no responsibility for data errors resulting from transmission or conversion processes. Only electronic proposals will be accepted. Proposals must be sent to morlova@usaid.gov and dharter@usaid.gov by the due date and time specified above. No other forms of submission will be accepted.

The Government reserves the right to award a contract without discussions based upon the evaluation of an Offeror's technical and cost proposal in accordance with this RFP. Therefore, an Offeror's initial technical and cost proposal should contain its best terms to meet requirements and the objectives of the Statement of Work.

The RFP does not obligate the United States Government to award a contract nor does it commit the Government to pay any cost incurred in preparing and submitting a proposal. In addition, the Government reserves the right to reject any and all offers, if such action is considered to be in the best interest of the Government. Award of a contract under this RFP is subject to the availability of funds and other approvals.

Thank you for your interest in USAID programs.

Sincerely,

/s/

Daniel E. Harter
Regional Contracting Officer

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING N/A	PAGE OF 2 of 162
2. CONTRACT NUMBER	3. SOLICITATION NUMBER 72012121R00001	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED 03/10/2021	6. REQUISITION/PURCHASE NUMBER TBD
7. ISSUED BY USAID/Ukraine/Regional Contract Office Department of State 5850 Kyiv Pl. Washington D.C. 20521-5850			8. ADDRESS OFFER TO (If other than Item 7)		

NOTE: In sealed bid solicitations "offer" and "Offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried, in the depository located in _____ until 16:00 (Kyiv LT) local time 04/30/2021
(Hour) (Date)

CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All Offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME Ms. Marina Orlova Administrative CO	B. TELEPHONE (NO COLLECT CALLS)		C. E-MAIL ADDRESS morlova@usaid.gov
		AREA CODE	NUMBER	EXT.

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OFFER (Must be fully completed by Offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 210 calendar days (60 calendar days unless a different period is inserted by the Offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52-232-8)	10 CALENDAR DAYS (%)	20 CALENDAR DAYS (%)	30 CALENDAR DAYS (%)	CALENDAR DAYS (%)
14. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)	
15B. TELEPHONE NUMBER AREA CODE NUMBER EXT.	17. SIGNATURE		18. OFFER DATE	
<input type="checkbox"/> 15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE				

AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION		
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(a) () <input type="checkbox"/> 41 U.S.C. 253(c) ()	23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)		ITEM	
24. ADMINISTERED BY (If other than Item 7) USAID/Ukraine/Regional Contract Office Department of State 5850 Kyiv Pl. Washington D.C. 20521-5850	CODE	25. PAYMENT WILL BE MADE BY USAID/Ukraine/Office of Financial Management Department of State 5850 Kyiv Pl. Washington D.C. 20521-5850		
26. NAME OF CONTRACTING OFFICER (Type or print) Daniel E. Harter	27. UNITED STATES OF AMERICA (Signature of Contracting Officer)			28. AWARD DATE

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

PART I - THE SCHEDULE

SECTION B - SUPPLIES OR SERVICES AND PRICE/COSTS

B.1 PURPOSE

The purpose of this contract is to advance justice for all Ukrainians by strengthening justice systems, services, and societal engagement to deliver responsive solutions to Ukrainians' legal problems and justice needs through the "USAID Justice for All (J4A) Activity" in Ukraine as described in detail in Section C. STATEMENT OF WORK.

B.2 CONTRACT TYPE

This is a **cost plus fixed fee** (CPFF) completion contract. For the consideration set forth in the contract, the Contractor must provide the results and deliverables described in Section C and Section F of this contract. The Contractor must also comply with all other contract requirements.

B.3 ESTIMATED COST, CEILING PRICE, FIXED FEE, AND OBLIGATED AMOUNT

- (a) The estimated cost for the performance of the work required hereunder, exclusive of fixed fee, if any, is _____ [**TBD**]. The fixed fee, if any, is _____ [**TBD**]. The estimated cost plus fixed fee, if any, is _____ [**TBD**].
- (b) Within the estimated cost plus fixed fee (if any) specified in paragraph (a) above, the amount currently obligated and available for reimbursement of allowable costs incurred by the Contractor (and payment of fee, if any) for performance hereunder is _____ [**TBD**]. The Contractor shall not exceed the aforesaid obligated amount.
- (c) Funds obligated hereunder are anticipated to be sufficient through _____ [**TBD**].

B.4 CONTRACT BUDGET

(a)	<u>Cost Category</u>	<u>Amount</u>
	Total Estimated Cost	TBD
	Fixed Fee	TBD
	Total Estimated Cost Plus Fixed-Fee	TBD

- (b) The inclusion of any costs in the above cost categories does not obviate the requirement for prior approval by the Contracting Officer of cost items designated as requiring prior approval by any of the terms and conditions of this contract, including the applicable cost principles (see FAR § 52.216-07, "Allowable Cost and Payment"); nor does it constitute a determination of allowability by the Contracting Officer of any item of cost, unless specifically stated elsewhere in this contract. Also, these amounts may not be adjusted without a written modification signed by the Contracting Officer. The Contractor must not bill any amounts against this contract in excess of the amounts specified for each line item.
- (c) The Contractor agrees to furnish data that the Contracting Officer's Representative (COR) may request on costs expended or accrued under this contract.

B.5 INDIRECT COSTS

(a) Pending establishment of revised provisional or final indirect costs, USAID will reimburse allowable indirect costs on the basis of the following negotiated provisional or predetermined rates and the appropriate bases pursuant to the Contractor's current executed Negotiated Indirect Cost Rate Agreement:

(b)

Description	Rate	Base	Type	Period
	%	1/	1/	1/

1/Base of Application:

Type of Rate:

Period:

(c) The Contractor will make no change in its established method of classifying or allocating indirect costs without the prior written approval of the Contracting Officer.

B.6 COST REIMBURSABLE

The U.S. dollar costs allowable will be limited to reasonable, allocable, and necessary costs determined in accordance with FAR § 52.216-7, "Allowable Cost and Payment," FAR § 52.216-8, "Fixed Fee," FAR § 52.232-20, "Limitation of Cost," and FAR § 52-232-22, "Limitation of Funds," if applicable, and AIDAR 752.7003, "Documentation for Payment."

In addition, the requirement and conditions concerning estimated cost and funding apply as detailed in FAR § 52.232-22, Limitation of Funds, incorporated by reference in Section I of this contract.

B.7 PAYMENT OF FIXED FEE

USAID will pay a proportion of the contractor's fixed fee each month pursuant to FAR 52.216-8, Fixed Fee, upon the receipt of a proper invoice by the Office Financial Management (OFM) located in USAID/Ukraine.

B.8 MULTI-YEAR CONTRACT AND CANCELLATION CEILING

This contract is considered non-severable, and is therefore a multi-year contract as defined in FAR 17.103. Therefore, this contract is subject to the requirements of FAR 17.106.

a. Performance under this contract during the second and subsequent program years is contingent upon the appropriation of funds. All program years except the first are subject to cancellation. Cancellation shall occur by the dates specified below if the Contracting Officer:

1. Notifies the Contractor that funds are not available for contract performance for any subsequent program year; or
2. Fails to notify the Contractor that funds are available for performance of the succeeding program year.

b. Cancellation Ceiling:

This is a CPFF type contract where the Contractor is authorized to be reimbursed for all costs which are allowable in accordance with FAR 52.216-7, "Allowable Costs and Payment."

Therefore, the Contractor will not incur any costs which would have been amortized over the life of the contract should the contract be cancelled in accordance with FAR 52.217-2.

The Government's liability for cancellation charges shall not exceed \$0. This amount will be reduced in accordance with FAR 17.106-1(c)(1) at the conclusion of each program year, as follows:

Program Year	Cancellation Date	Cancellation Ceiling
Year 1: 2021/2022	N/A	N/A
Year 2: 2022/2023	MONTH TBD, 2022	TBD
Year 3: 2023/2024	MONTH TBD, 2023	TBD
Year 4: 2024/2025	MONTH TBD, 2024	TBD
Year 5: 2025/2026	MONTH TBD, 2025	TBD

[END OF SECTION B]

SECTION C – DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

USAID JUSTICE FOR ALL (J4A) ACTIVITY

C.1 PURPOSE AND SCOPE

Activity Purpose: Advance justice for all by strengthening justice systems, services, and societal engagement to deliver responsive solutions to Ukrainians' legal problems and justice needs.

Activity Objectives:

Objective 1: Strengthen the independence, accountability, and effectiveness of justice systems and institutions.

Objective 2: Enhance the accessibility and quality of people-centered justice services and multiple pathways to justice.

Objective 3: Equip and empower civil society and active citizens to hold the justice system and justice services accountable and drive demand for meaningful judicial reform.

C.2 BACKGROUND AND CONTEXT

Strengthening the rule of law, establishing an independent judiciary, and combating corruption, particularly political, have been the priorities of many Ukrainians since the country's independence in 1991. Owing to Soviet legacies and also post-independence policies and practices, the level of public trust in state institutions, especially justice institutions (i.e. courts, public prosecution, law enforcement), has been extremely low in independent Ukraine.

Following the Euromaidan and Revolution of Dignity in 2014, the political situation in Ukraine changed significantly and with it the possibilities to strengthen the rule of law, establish a genuinely independent judiciary, and effectively combat corruption. A strong and active civil society that advocated and supported comprehensive judicial reform, unprecedented political will of the Ukrainian president and government in 2015 and 2016, and the commitment of international donors to intensify assistance to Ukrainian reforms all worked in tandem to create a window of opportunity for profound judicial reforms in the country. As a result, in the period 2015-2019, a number of important results were achieved, including the establishment of new judicial bodies and the reform of existing institutions.

Nevertheless, despite these achievements, the judiciary did not produce the results expected by society¹. Most notably, the judiciary did not become an agent of fundamental change for addressing Ukrainians' justice needs, rooting out corruption, and consolidating Ukraine's young democracy. This is due in large part to the inability of the High Qualification Commission of Judges (HCCJ) and the High Council of Justice (HCJ) to effectively guarantee the institutional independence and integrity of the judiciary and that of individual judges.

When President Volodymyr Zelenskyy was elected and assumed office in May 2019, he committed to a new wave of judicial reform. However, the first 1.5 years of the Zelenskyy Administration have recorded little progress. Despite proactive early steps, the government's judicial reform policy has proven largely unsystematic, ineffective, and unpredictable as legislative reform efforts have been met by Constitutional Court (CCU) challenges, requests for Venice Commission intervention, significant resistance from factions within the ruling Servant of the People party, and other delays. Nevertheless, efforts toward a new wave of judicial reform were recently reinvigorated with the reconstitution of the Legal Reform Commission (LRC), which was tasked by the President to develop and implement a comprehensive judicial reform strategy, including for priority reforms aimed at expanding access to justice for all.

¹ 2020, Justice Sector Brief for the Ukraine Reform Conference 2020-2021 in Vilnius by UAREform initiative, <https://uareforms.org/en/reforms/judicial-reforms>

C.3 DEVELOPMENT CHALLENGE

Ukraine's justice sector faces many pressing challenges that hinder self-reliant development and the promotion of the rule of law. Of these many challenges, the Justice for All activity focuses on addressing those that weaken judicial independence, impede a people-centered justice orientation, and limit universal access to basic justice.

Justice remains elusive for many Ukrainians in their everyday lives, while the rule of law continues in a precarious state. At a *systems level*, insufficient leadership, communication, coordination, and collaboration across institutions and actors impedes coherence and efficiency. Challenged by weak institutional capacity, corruption, and political interference, the judiciary remains an ineffective check on executive power and lacks public trust and confidence. According to the World Economic Forum Global Competitiveness Index's Judicial Independence metric, Ukraine remains far from the level of its Europe and Central Asia peers on judicial independence². Weak judicial independence and integrity impedes democratic and economic growth and undermines Ukraine's international commitments and Euro-Atlantic aspirations.

According to recent USAID/New Justice polling, just 16 percent of the public express some degree of trust in the judiciary³ and, according to recent National Democratic Institute (NDI) polling, just 11 percent express trust in courts⁴. The lack of confidence in the judicial system deters public engagement in the judicial processes and use of justice services. Notably, it disempowers victims and the aggrieved to pursue justice and resolve disputes. Moreover, the lack of public trust in the judiciary discourages domestic and foreign investment in Ukraine. In fact, according to a recent European Business Association survey, mistrust in the judiciary is the number one obstacle to investment in Ukraine ahead of corruption, monopolization, and others⁵.

At a *services level*, persistent barriers to basic universal justice, including ineffective, inefficient, and limited access to justice services, leave Ukrainians unable to fully exercise their rights and fully engage in society and the economy. Justice and legal services, including those provided by courts, the bar, and civil society organizations, remain overly complicated, not always focused on the needs of justice seekers, and inaccessible to many. As a result, Ukraine faces a considerable justice gap, or the difference between the justice people want and need and the justice they receive.

According to the World Justice Project's Global Insights on Access to Justice, 2019, 43 percent of the Ukrainian population has experienced a legal problem in the recent past (most of which are civil in nature), of which, some 37 percent experienced a significant hardship related to resolving the problem⁶. Similarly, according to a 2018 International Renaissance Foundation (IRF) survey on legal needs in four major regional cities in Ukraine, 50 percent of the population admitted a legal problem in the past three years, of which, 32 percent did not try to solve the problem for various reasons, including lack of confidence that a formal legal process would change anything, because of expected financial costs, and because they did not know how to engage the legal system, among other reasons. For the 68 percent who tried to solve the issue, few thought to engage the legal system or a legal professional. Among those that tried, 80 percent admitted not receiving a

² 2017, World Economic Forum Global Competitiveness Index:

https://govdata360.worldbank.org/indicators/hce0ad5fa?country=UKR&indicator=670&viz=line_chart&years=2007,2017

³ 2018, USAID New Justice Program, National Public Survey Regarding Trust in the Judiciary, Judicial Reform and Perception of Corruption: https://newjustice.org.ua/wp-content/uploads/2018/11/1_NJ_October_2018_SurveyPublic_Results_ENG.pdf

⁴ 2020, NDI survey "Opportunities And Challenges Facing Ukraine's Democratic Transition":

https://www.ndi.org/sites/default/files/August%202020%20Political%20Survey%20-%20Public%20ENG_%20vf.pdf

⁵ 2020, European Business Association's Foreign Investor Survey 2020 https://eba.com.ua/wp-content/uploads/2020/11/2020_ForeignInvestorSurvey_Presentation_en.pdf

⁶ 2017, WJP, Access to Justice, Ukraine profile <http://data.worldjusticeproject.org/accesstojustice/#/country/UKR>

satisfactory outcome⁷. According to the IRF survey, the most common justice problems faced were related to consumer rights, housing and communal services, social benefits and privileges, medical care, and labor relations. Moreover, the justice gap grows as no prevention strategies are aligned with such recurring justice problems to prevent them arising in the first place or growing in complication.

Finally, at a *society level*, citizens and civil society, especially in the regions, are insufficiently engaged to be effective advocates for reform and hold justice institutions and actors accountable for delivering people-centered justice. According to the same USAID/New Justice polling, just 16 percent of the national population acknowledge understanding justice issues and judicial reform. This share is smaller in the regions. Insufficient engagement remains a lost opportunity for holding public justice service providers accountable for delivering justice solutions to the public. Within the civic space, legal education has improved but a large number of justice sector professionals, including judges, prosecutors, and lawyers graduate without adequate knowledge and skills and are not sufficiently prepared to practice. In addition, a lack of legal literacy disempowers many Ukrainians and impedes the development of a culture of lawfulness.

Many of these challenges and shortcomings acknowledged above have been exacerbated by the COVID-19 pandemic, in terms of institutional performance and continuity of operations and also in terms of new legal problems and justice needs associated with the public health emergency and its socio-economic and human rights implications.

C.4 RELATIONSHIP TO USAID STRATEGY

This activity will contribute to the following Development Objective (DO) and Intermediate Results (IRs) under USAID/Ukraine's Country Development Cooperation Strategy (CDCS) for 2019-2024. This activity is part of USAID/Ukraine's Democratic Governance Project, which encompasses activities whose primary purpose is to contribute to CDCS DO 3.

- DO 3: Democratic Governance Strengthened
 - IR 3.1: Citizens engaged in good governance
 - Sub-IR 3.1.1: Increased citizen advocacy, oversight, and awareness of reform processes
 - IR 3.2: Government more responsive and accountable to citizens
 - Sub-IR 3.2.1: Strengthened capacity of state institutions to represent citizens, uphold the rule of law, and protect human rights
-
- DO1: Corruption Reduced in Target Sectors
 - IR 1.3: Strengthened Anti-Corruption Systems and Practices
 - Sub-IR 1.3.2: Judicial Anti-Corruption Mechanisms Strengthened

C.5 COLLABORATION

C.5.1 Collaboration with Other USAID Activities

USAID is a leading international donor in Ukraine and has supported reforms to strengthen democracy, rights, and governance, including the rule of law, since the country's independence. USAID's current rule of law program, New Justice, has, since 2016, worked with Ukraine's judiciary, government, Verkhovna Rada, bar, law schools, civil society, media, and citizens to create the conditions for an independent, accountable, transparent, and effective justice system that upholds the rule of law and fights corruption in Ukraine. The program has piloted a number of innovative initiatives in building the self-reliance of judicial processes and institutions, engaging the private sector, advancing e-justice and similar innovative solutions; as well as gained substantial lessons learned in strengthening judicial independence, integrity, and anti-corruption processes, among

⁷ 2018, International Renaissance Foundation's survey of Legal Needs in Ukraine's regions
https://www.irf.ua/sotsiologichne_doslidzhennya_viyavilo_pravovi_potrebi_ta_problemi_v_regionakh_ukraini/

others. The Contractor must substantially collaborate with and/or expand tools/approaches successfully used by New Justice.

The Contractor must collaborate with the Mission's portfolio of programs in economic growth, health, and democratic governance. Current and/or planned activities requiring collaboration include: Support to Anti-Corruption Champion Institutions (SACCI), Transparency and Accountability in Public Administration and Services (TAPAS), Human Rights in Action, Enhance Non-Governmental Actors and Grassroots Engagements (ENGAGE), Ukraine Civil Society Sectoral Support Activity, USAID Transformation Communications, Ukraine National Identity Through Youth (UNITY) Activity, and Financial Sector Transformation (FST).

C.5.2 Collaboration with Other Development Partners

USAID will continue to prioritize effective donor coordination and collaboration with partner institutions and intends this new rule of law program will play a leading role in strengthening coordination and collaboration and in ensuring that USAID and other international donors are able to anticipate as well as respond to new issues and opportunities for justice system reform.

The Contractor must coordinate extensively with relevant efforts funded by other donors and must propose to the USAID contracting officer's representative (COR) how to adapt contract activities over time to match with the changing character of these projects.

The Contractor must also coordinate, as appropriate, with U.S. government agencies engaged in justice sector strengthening including programming by the State Department's International Narcotics and Legal Affairs (INL) and the Department of Justice. The depth of coordination will depend on the relevancy of the project in question. However, given the multitude of donors and international interest in the justice sector, the Contractor must conduct a broad range of coordination efforts, from leading regular rule of law coordination meetings, to ad-hoc consultations on emerging issues, to joint planning of relevant interventions. The Contractor must coordinate appropriately and report on that coordination on a quarterly basis.

C.5.3 Collaboration with Host Country Governmental Partners

Active coordination with representatives of judicial and other state institutions has historically resulted in numerous opportunities for collaboration such as joint events on judicial selection and discipline, training, access to justice, and civil society engagement in judicial reform.

The Contractor must actively coordinate with the following host country entities: the Supreme Court, High Anti-Corruption Court, High Council of Justice, Council of Judges, High Qualifications Commission of Judges, Public Integrity Council, State Judicial Administration, National School of Judges, President's Office, National Investment Council, National Reform Council, Ministry of Justice, Ministry of Education and Science, Ministry of Digital Transformation, and Ministry of Economic Development, Trade and Agriculture, among others.

C.5.4 Collaboration with Host Country Non-Governmental Partners

Non-governmental partners from law schools to legal profession organizations, civil society justice advocacy, watchdog, and service delivery organizations, and others, make profound contributions to strengthening the justice sector and rule of law in Ukraine. The Contractor must, therefore, collaborate with non-governmental justice sector stakeholders to complement their efforts embracing local systems, ownership, and leadership principles.

C.6 TECHNICAL APPROACH

The Justice for All activity (heretofore "the Activity") will advance Ukraine's self-reliance by building the commitment and capacity of the government and other justice system stakeholders to lead judicial reform and deliver people-centered justice. In this regard, the Activity looks to support the

justice system to refocus its approach to deliver meaningful progress towards justice for all⁸ by improving justice journeys from problem to resolution, empowering people and communities so they can act when legal problems and justice needs arise, expanding access to responsive justice services, offering alternative pathways to justice, and ensuring fair outcomes that are appropriate and meet human rights standards.

C.6.1 Theory of change

IF justice system institutions and actors become more independent, accountable, and effective; AND IF justice services become more accessible, higher quality, and more responsive; AND IF civil society and active citizens hold the justice system and services accountable and drive demand for meaningful judicial reform; THEN Ukraine’s justice system will be better positioned to close the justice gap and deliver justice for all Ukrainians as a means to advancing the nation’s self-reliance, democratic and economic development, and Euro-Atlantic integration.

C.6.2 Objectives and Illustrative Outcomes

The Activity is guided by an Overarching Purpose and three supporting Objectives. The below section details the objectives, expected results (ER), and illustrative activities, based on which Offerors should propose programmatic interventions.

Overarching Purpose	Advance justice for all by strengthening justice systems, services, and societal engagement to deliver responsive solutions to Ukrainians’ legal problems and justice needs.
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The Justice for All activity aims to build the commitment and capacity of Ukraine’s justice system to deliver people-centered justice⁹ and expand universal access to justice as a means to reduce the justice gap, or the difference between the justice people want and need and the justice they receive, and better ensure Ukrainians can fully contribute to and benefit from the economic, social, and democratic development of their community and country. Through this Activity, the Contractor must advance a justice for all approach at the systems, services, and societal engagement levels to ensure a comprehensive and holistic response for strengthening the justice system, including an independent judiciary, as an integral element for Ukraine’s democratic advancement and Euro-Atlantic aspirations.

Objective 1	Strengthen the independence, accountability, and effectiveness of justice systems and institutions.
ER 1.1	Justice sector legal and regulatory frameworks, policies, and strategies to ensure judicial independence, accountability, and effectiveness strengthened and implemented.
ER 1.2	Commitment and capacity of justice institutions to operate independently, accountably, and effectively increased.
ER 1.3	Judicial accountability and internal disciplinary mechanisms, and the role of the judiciary in combating corruption in society, strengthened.
ER 1.4	Efficiency, effectiveness, and integrity of judicial administration and self-governance, including through open justice approaches, enhanced.

⁸ 2019, Task Force on Justice, Justice for All – Final Report (New York: Center on International Cooperation) https://bf889554-6857-4cfe-8d55-8770007b8841.filesusr.com/ugd/90b3d6_746fc8e4f9404abeb994928d3fe85c9e.pdf

⁹ 2019, Overseas Development Institute, Working paper “Universal access to basic justice - Costing Sustainable Development Goal 16.3 <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12681.pdf>

ER 1.5	Development and implementation of prevention strategies to ensure prevalent legal problems are less likely to arise or escalate supported.
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Objective 1_ Objective Description:

Through the first objective, the Contractor must partner with local institutions and actors to strengthen the Ukrainian justice system to become more independent, accountable, and effective as a means to respond to society's broad spectrum of justice needs, ensure fair and equitable outcomes for all justice seekers, and, ultimately, strengthen public trust in Ukraine's justice system as a stepping stone to greater confidence in Ukraine's democratic development and the rule of law. Toward these ends, the Contractor must support justice stakeholder efforts to advance judicial reform, integrity-based judicial selection, judicial accountability and anti-corruption measures, and judicial administration and self-governance.

Judicial independence and accountability are the cornerstone of Ukraine's fight against corruption and, therefore, the Contractor must strengthen internal judicial accountability and disciplinary measures while promoting the role of the judiciary in combating corruption in society, including through the High Anti-Corruption Court (HACC). The Contractor must also facilitate and foster greater coherence, coordination, and communication among judicial self-governance and administrative bodies, the courts, justice associations, and legal professions to be effective advocates for and leaders of a people-centered justice agenda and to deliver the reforms most demanded and needed by society. In support of this approach, the Contractor must promote the systematic collection and use of data to steer justice reform, increase awareness of unmet needs, provide open data access as a platform for partnerships and accountability, and to inform judicial self-governance and administration policies, management decision-making, and innovation based on the evidence of what works.

Furthermore, the Contractor must work with justice system stakeholders to strengthen financing for justice by supporting efforts to expand and diversify the resource base and more efficiently manage and better target existing resources and revenues to ensure that finite justice resources can have the greatest impact in reducing the justice gap. To strengthen transparency and accountability in the judiciary and to ensure direct citizen participation in the judicial process, the Contractor must also support efforts to implement a jury trial system. Finally, under this objective, the Contractor must support the development and implementation of prevention strategies that tackle the root causes of injustice, promote trust in justice systems and processes, and strengthen legislative and regulatory frameworks and their implementation at the source of prevalent legal problems as a means to reduce Ukraine's justice gap and prevent common problems from arising in the first place or escalating.

Objective 1_ Illustrative Activities:

- Provide technical expertise to improve legal and regulatory frameworks in line with international and European standards.
- Support multi-stakeholder implementation of the forthcoming judicial reform strategy.
- Build stakeholder commitment to an inclusive justice system that increases diversity and representation of women and underrepresented groups at all levels of the justice system and increasingly in management and decision making roles.
- Strengthen anti-corruption measures within the judiciary, and the role of the judiciary in Ukraine's larger anti-corruption agenda, including through support to the HACC.
- Improve the legal and regulatory framework for jury trials and build public support for jury service.
- Enhance justice sector transparency and citizen engagement by ensuring open justice principles and practices are integrated in judicial self-governance and administration processes.

Objective 2	Enhance the accessibility and quality of people-centered justice services and multiple pathways to justice.
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ER 2.1	Capacity of justice institutions and courts to provide efficient, effective, and responsive services, based on evidence and user data, strengthened.
ER 2.2	Use of e-justice tools by justice sector institutions and actors increased.
ER 2.3	Enforcement of judgements within a reasonable time strengthened.
ER 2.4	Accessibility and quality of alternative dispute resolution mechanisms, including commercial arbitration improved.

Objective 2_Description

Through the second objective, the Contractor must encourage and support national and local governments and relevant civic organizations, service providers, and professions to deliver expanded and improved people-centered justice services that guarantee fundamental rights and freedoms, resolve disputes, and meet the diverse justice needs of Ukrainian society. To achieve this, the Contractor must explore opportunities to accelerate and simplify processes and remove barriers to access to justice through digitalization and automation efforts and innovation initiatives. The Contractor must also support alternative pathways to justice and dispute resolution, including civil mediation and through restorative justice approaches, and must explore possibilities for an expansion of the one-stop-shop approach whereby a range of justice services are provided in one online and/or physical venue (e.g. single portal, justice house, community justice centers, etc.). The Contractor’s support must also include technical assistance regarding the enforcement of judgments to ensure proper completion of the justice journey and improve satisfaction of the justice process.

Particular attention will be given to improving the quality and accessibility of services, affording greater flexibility and means for solving legal problems, and enhancing the experience and ensuring fairer outcomes for justice seekers. This includes community-level engagement and developing localized strategies to provide justice and legal services to underserved populations in order to narrow Ukraine’s justice gap, including through support to service provision CSOs. In order to best ensure the efficiency, responsiveness, and effectiveness of justice service delivery in meeting justice needs, the Contractor must build the commitment and capacity of justice service providers to systematically collect and use service delivery data. Relevant to institutionalizing an evidence-based approach to justice service delivery, the Contractor must facilitate citizen engagement in social accountability mechanisms to ensure routine user feedback on service provision and performance of courts and other justice institutions and actors.

Importantly, the Contractor must prioritize engagement of the private sector both as justice service providers and justice service users. In this regard, the Contractor must support the justice system to expand partnerships with local private sector entities to deliver quality and low-cost services and solutions to legal problems as well as support the system to understand the justice needs of the private sector and then deliver responsive justice services to address those needs. Interventions underpinning the second objective must be implemented at the national and sub-national level, particularly in those regions and communities which demonstrate significant need and potential for reducing the justice gap.

Objective 2_Illustrative Activities

- Support governmental and non-governmental partners to develop and deliver a continuum of legal and justice services, including free legal aid, to ensure equal access to justice for all.
- Assist partners to assess and develop solutions to barriers in access to courts and other justice services.
- Support the expansion and sustainability of community-based justice centers.
- Support the integration of justice and legal services with other public and private services (e.g. health, employment, housing) to provide more holistic and comprehensive responses to legal problems and justice needs.

- Develop and deploy interventions alongside partners to increase the use of alternative legal service providers and dispute resolution mechanisms, including online dispute resolution, and Do-It-Yourself (DIY) legal tools.
- Strengthen investor/private sector confidence in commercial dispute resolution and/or international arbitration.
- Support partners to improve justice data collection systems to identify justice needs and user satisfaction as a means to improve practices and services for more people-centered justice.
- Establish social accountability mechanisms with local partners to ensure citizen feedback loops for improved justice and legal service delivery.
- Support the development and deployment of the transformative power of innovation to bring new players into the justice sector, including through private sector partnerships, and to provide justice at scale to accelerate the narrowing of the justice gap.

Objective 3	Equip and empower civil society and active citizens to hold the justice system and justice services accountable and drive demand for meaningful judicial reform.
ER 3.1	Opportunities for citizen inclusion and participation in judicial processes and policy making broadened.
ER 3.2	Legal literacy among the general public expanded.
ER 3.3	Quality and accessibility of legal education improved.
ER 3.4	Citizen oversight of judicial institutions, actors, and services, including facilitating justice service user feedback models, strengthened.

Objective 3 Description

Through the third objective, the Contractor must empower civil society and active citizens, including the private sector, and equip them with the capacity and means to effectively drive justice sector accountability and advance meaningful judicial reform. Toward this goal, the Contractor must engage national and local organizations and actors that best understand local needs and enjoy the public’s trust to lead citizen oversight of justice systems and services to ensure they are accountable to the communities they serve. This includes building community and public awareness of justice issues and rule of law principles and keeping them informed of developments related to their ability to exercise their rights. Additionally, the Contractor must support civil society participation in the co-production of justice policies, processes, and practices that affect Ukrainians’ daily lives and strengthen the rule of law. The Contractor must, inter alia, ensure the public has access to justice data and legal information and is equipped to evaluate the performance of justice institutions and actors and collaborate to solve justice and rule of law problems.

The Contractor must also engage local partners to improve the quality of legal education as a means to enhance professional standards across the justice system. Toward this objective, the Contractor must work with legal education governance bodies and law schools to ensure merit-based admissions and achievement and the strengthening of curricula and instruction methods to better prepare graduates to provide quality legal services and strengthen the legal profession and its independence and integrity.

Objective 3 Illustrative Activities

- Increase public awareness of justice issues and rule of law principles to build a culture of lawfulness.
- Empower citizens to know, use, and shape the law and policy to solve legal problems, affect change, and combat corruption.

- Civil society collaborates with justice institutions to facilitate compliance with open government commitments of Ukraine.
- Strengthen skills-based legal education curricula and instruction methods to prepare graduates to enter their professions.
- Strengthen legal education quality assurance frameworks, mechanisms, and oversight.

C.7.0 CROSS-CUTTING CONSIDERATIONS

The Contractor must have the capacity to bring high caliber technical assistance, institutional support, and comparative expertise to strengthen justice and the rule of law in Ukraine. The following cross-cutting principles must be integrated throughout the Contractor's approach to achieve Activity objectives.

C.7.1 Journey to Self-Reliance and Financing Self-Reliance

USAID has chosen to support judicial reform and people-centered justice as a means to advance Ukraine's Journey to Self-Reliance¹⁰ in the justice sector. In this regard, building the commitment and capacity underpinning self-reliance will be deeply embedded in USAID's approach to this activity. The Contractor must, therefore, strengthen the capacity of the government, private sector, civil society, and active citizens to administer, advocate for, and deliver justice. Simultaneously and in close coordination with USAID and the U.S. Embassy, the Contractor must advance host country commitment to the rule of law and people-centered justice by further engaging citizens and the civic sectors partners in reforms that meet international and EU standards, Ukraine's international commitments, and the expectations of its citizens. Recognizing that more and better utilized resources are needed to achieve justice for all and improve the self-reliance metrics as presented in the Ukraine Country Roadmap¹¹, the Contractor must advance relevant Financing Self-Reliance¹² opportunities within the justice sector on behalf of the justice sector resource base. At the end of the Activity, USAID will leave behind a self-sustaining ecosystem of proven partnerships and relationships among these actors, who will be able to further define, develop, and finance initiatives that advance judicial integrity, accountability, and independence in the future.

C.7.2 People-Centered Justice

The Contractor must adopt and integrate a people-centered approach to justice reform and rule of law promotion. This means it must work with justice institutions and actors to: put people and their legal needs at the center of the system by investing in data collection and analysis of people's legal problems and needs, transform these institutions and actors and the services they provide in order to solve these problems, and improve the experience of justice seekers as well as their outcomes. In addition, it must seek to prevent legal problems and justice needs from arising and reduce the harm and burden on the individual if and when they do by facilitating collaboration amongst a broad spectrum of stakeholders and beneficiaries both internal and external to the justice sector.

C.7.4 Open Justice

The Contractor must promote open justice principles of transparency, civic participation, inclusion, and public accountability with regards to the justice system and its constituent institutions and actors. It must engage stakeholders and facilitate collaboration between justice institutions and actors, the executive and legislative branches, civil society, and the private sector to undertake meaningful reforms and introduce new practices to improve performance and ultimately build public trust in the justice system and rule of law. Open justice initiatives include, inter alia, those in support of facilitating greater disclosure of justice data, information, and decisions, increasing public engagement and participation in justice policy and budgetary processes, and strengthening the role of the judiciary in supporting democratic governance and ensuring compliance with open government commitments.

¹⁰ USAID Journey to Self-Reliance Policy <https://www.usaid.gov/selfreliance>

¹¹ USAID/Ukraine Country Roadmap <https://selfreliance.usaid.gov/country/ukraine>

¹² USAID Financing Self Reliance Policy <https://www.usaid.gov/open/financing-self-reliance>

C.7.4 COVID-19 Adaptation

The Contractor must support the justice system in responding to and remedying the immediate institutional, social, and economic implications of COVID-19 and strengthen its role in the country's longer term recovery and reform efforts. It must identify and learn from how COVID-19 related public emergency, lockdowns, and social distancing measures affected the operations of the justice system institutions and essential justice and legal services and personnel. It must identify good practices and innovations in responding to the pandemic and take them to scale where applicable and feasible. Similarly, it must identify weaknesses and gaps in the response and propose solutions to build back better and strengthen the overall resiliency of the justice system and the judiciary to deal with future emergencies.

C.7.5 Innovative Justice Solutions

The Contractor must embrace innovation in the rule of law space, including automation and digitization as well as regulatory and procedural reforms, as an important means by which it will assist institutions and actors achieve their goals and meet the needs of the individuals and communities they are mandated to serve. Toward this end, the Contractor must establish platforms, facilitate collaboration and networks, accelerate locally driven initiatives, and advance cultures of experimentation and innovation that strengthen institutional performance, assist in solving legal problems, enhance experiences, and ultimately maximize rule of law outcomes.

C.7.6 Private Sector Engagement

Private Sector Engagement¹³ (PSE) is critical for advocating reforms to strengthen judicial independence, integrity, and accountability and building the sustainability of people-centered justice approaches. The Contractor, working in unison with justice system stakeholders, must engage private sector representatives both as justice service providers, to ensure cost-effective and innovative justice services, and as service users, to ensure justice service delivery is also meeting its justice needs. The Contractor must catalyze PSE opportunities during implementation. To that end, the Contractor must ensure that all relationships and partnerships developed will be led and managed by a local justice system partner to ensure sustainability.

C.7.7 Gender Equality and Social Inclusion

Gender equality, female empowerment, and social inclusion are essential for achieving Justice for All activity objectives. The USAID Gender Equality and Female Empowerment Policy¹⁴ advances equality between females and males, and empowers women and girls to participate fully in and benefit from development through the integration of gender in the entire programming cycle, from design and implementation to monitoring and evaluation.

According to the Justice for Women¹⁵ high-level group report, there are five promising approaches for increasing justice for women: eliminate legal discrimination against women by repealing discriminatory laws; prevent and respond to intimate partner violence; overcome disadvantage for poor and marginalized women by providing access to legal aid and other services; empower women, economically and as rights holders; and include women as decision makers by ensuring equal representation of women at all levels of the justice sector.

USAID requires that all activities fully address gender considerations, ensuring that both men and women benefit from USAID support and that gender awareness is a built-in component of activity interventions. In April 2017, a Gender Analysis¹⁶ report for USAID/Ukraine was published summarizing major observations and recommendations for main technical areas of USAID support in

¹³ USAID Policy on Private Sector Engagement <https://www.usaid.gov/work-usaid/private-sector-engagement>

¹⁴ USAID Policy On Gender Equality And Female Empowerment <https://www.usaid.gov/policy/gender-female-empowerment>

¹⁵ UN Women's Justice for Women High Level Group Report <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/justice-for-women-high-level-group-report-en.pdf?la=en&vs=4044>

¹⁶ 2017 USAID/Ukraine Gender Analysis Report http://gendercenter.sumdu.edu.ua/images/17.08.17/GENDER_ANALYSIS_REPORT_USAID_UKRAINE.pdf

Ukraine. The Contractor must incorporate these and other gender and social inclusion considerations into all interventions, with a focus on the different ways that this Activity affects men and women, based on the Gender Analysis recommendation that consideration should be given to whether women and men from vulnerable groups are benefitting equally from program activities and results, with a broad understanding of all the different factors that put women and men in vulnerable situations.

C.7.8 Local Systems, Ownership and Leadership

To build self-reliance and ensure sustainability of efforts, the Contractor's approach must work extensively through Local Systems¹⁷ in a systematic and holistic manner. As such, the Contractor must involve local justice system actors to lead the development of a people-centered justice system as co-implementers of the program in order to build their own capacity and develop a sense of local ownership for the reforms and initiatives introduced.

C.8.0 IMPLEMENTATION PRINCIPLES AND TOOLS

The Justice for All activity implementation will be guided by the following principles and tools.

C.8.1 Agile, Adaptive Management

Ukraine's fluid political environment, especially within the justice sector, calls for flexibility in implementation, and the Contractor must be able to shift emphasis between and within components to: concentrate resources where the opportunities to make progress are greatest, refine approaches in response to knowledge obtained through data collection and learning exercises, and/or accommodate shifts in the political and social operating environment.

The Contractor must integrate tools such as surveys, focus groups, regular pause-and-reflect sessions, and others throughout its approach to ensure a keen sense of understanding of the operating environment in which the Activity is being implemented.

The Contractor must work closely with the COR to ensure that the Activity responds programmatically and operationally, within scope, to changing realities in the operating environment and/or U.S. Government priorities. These may include but are not limited to:

- Sector reform priorities and successes, as identified in close coordination with USAID;
- Shifts in the capacity and commitment of GOU stakeholders that may positively or negatively impact USAID's ability to work with them; and
- A significant change in the conflict in eastern Ukraine, particularly with respect to ensuring human rights; among others

The Contractor must contribute to USAID/Ukraine's commitment to a multi-faceted Collaborating, Learning and Adapting¹⁸ (CLA) approach to development. The CLA approach is based on the understanding that development efforts yield more effective results if they are coordinated and collaborative, test promising, new approaches in a continuous yet also rapid, targeted search for generating improvements and efficiencies, and build on what works and eliminate what does not.

C.8.2 Thinking and Working Politically

The Contractor must closely monitor developments in the political, economic, and social landscapes at the national and subnational levels and be poised to support new initiatives based on new developments and windows of opportunity with regards to rule of law and justice. To ensure politically savvy implementation, the Contractor must ensure sound understanding of underlying historical factors, formal and informal "rules of the game," relationships, conflict dynamics; gender, youth, and vulnerable population dynamics; power structures; incentives; and others. To keep abreast of the political will and changes in operating context, the Contractor must implement thinking and working politically (TWP) activities, including conducting Applied Political Economy Analysis

¹⁷ USAID Local Systems Framework For Supporting Sustained Development <https://www.usaid.gov/policy/local-systems-framework>

¹⁸ USAID Collaborating, Learning and Adapting Policy <https://usaidlearninglab.org/qrg/understanding-cla-0>

(PEA), as needed, based on USAID's Thinking and Working Politically through Applied Political Economy Analysis¹⁹ guide.

C.8.3 Tools to Enable People-Centered Justice and Self-Reliant Judicial Reforms

Grants Under Contract: To promote sustainable development and self-reliance, the Contractor must utilize local organizations to the fullest extent possible during the implementation of this activity through either sub-grants or sub-contracts. These sub-awards must be designed to encourage innovation and creativity in advancing justice system reforms. They must target local non-governmental organizations capable of advocating for and contributing to stronger and more independent justice institutions, monitoring institutional performance and providing reform oversight, increasing public awareness of law and justice, improving justice and legal services, and facilitating citizen engagement in reform processes. USAID anticipates that there will be numerous subcontracts and "Grants Under Contract" (GUCs) to Ukrainian organizations such as various local associations, CSOs, universities, individual consultants, and more. The Contractor must be able to rapidly and simultaneously issue, manage and coordinate multiple subcontracts and GUCs to local and international organizations as part of this Activity. The Contractor must also be able to redirect the work of its subcontractors and grantees to respond to windows of opportunity or to cease or redirect work deemed inappropriate or ineffective. The final determination of such decisions will ultimately be made by USAID in close consultation with the Contractor. USAID anticipates that approximately 20 percent of the Activity's total estimated cost will be directed to a GUC program.

Capacity Building: Building the capacity of justice sector officials to lead and implement reform and deliver people-centered justice services is and will remain a challenge. The Contractor must approach capacity building in a manner that will set it on a path towards sustainability once this Activity ends. This could include helping to develop university-level curricula or developing GOU-approved certification programs. It could also include subsidizing training through a voucher system on a CSO marketplace or other similar platforms. Some training could be accomplished through a peer-to-peer model where, for example, members of one court or local justice service provider conducts on-the-job mentoring of their counterparts in other localities. The Contractor must coordinate capacity building with other donors which will also be training on the same topics to avoid duplication. The Contractor must closely link capacity building assistance to on-the-job training.

Leveraging Existing Tools and Methodologies: Unless otherwise instructed by USAID, the Contractor must make use of tools and methodologies which New Justice and other USAID activities have already developed to avoid duplicating resources and reinventing the wheel. This also means committing to further progress on workstreams established by the New Justice activity. The substantial number of communities requiring justice service assistance in Ukraine and a limited budget makes it impossible for USAID to work extensively in all of them. However, USAID can multiply the impact of its programming by promoting the use of its tools and approaches foremost with the government for them to scale with their own resource contributions, but also with other donors.

Regional/International STTA: The Contractor must have the capacity to engage international and regional experts on people-centered justice service delivery; judicial independence, integrity, and accountability reforms; judicial governance and administration reform; alternative dispute resolution; online dispute resolution; eJustice; access to justice; among others, to provide high quality short- and medium-term technical assistance to GOU stakeholders at national and subnational and local levels. Beyond maintaining a roster of as-needed, rapidly deployable international STTA, the Contractor must leverage issue-specific expertise from Ukrainian civil society, consultants, and/or issue/affinity groups.

C.9 GEOGRAPHIC FOCUS

¹⁹ USAID Thinking and Working Politically through Applied Political Economy Analysis

<https://www.usaid.gov/documents/1866/thinking-and-working-politically-through-applied-political-economy-analysis>

To respond to the justice needs of the population, including the most vulnerable, in order to reduce the justice gap, a large share of interventions across the three objectives will be implemented at the sub-national level. The Contractor must, therefore, target programmatic interventions in select regions. The Contractor must propose a precise method and measurable criteria to determine the number of regions and which regions are selected for programmatic engagement. The methodology and criteria must consider the following principles: expressed commitment by local authorities to people-centered justice solutions; ensuring cost-effectiveness, justice services at scale, and multiplier effects of programmatic efforts; and targeting support to those most in need and those who best make use of support for advancing Ukraine's democratic, economic, and social development.

C.10 MONITORING, EVALUATION, AND LEARNING

The Contractor must develop a detailed draft activity Monitoring, Evaluation, and Learning Plan²⁰ (MEL), establishing specific output, outcome, and impact indicators (including, but not limited to the U.S. Foreign Assistance Framework list of standardized indicators and custom indicators) for quarterly, semi-annual, and annual reporting, with baselines, targets, benchmarks and disaggregation by gender, age, and location where appropriate. The MEL Plan must be approved by USAID. According to USAID's Evaluation Policy²¹ USAID must evaluate all large and pilot activities. If USAID/Ukraine decides to conduct a performance evaluation of this Activity, the Contractor must comply with USAID requirements regarding the evaluation, including selection of sites/beneficiaries, collection of data (including geographically disaggregated data), and working closely with USAID and the MEL Contractor, as determined by USAID.

C.11 LIST OF ANALYTICAL AND INFORMATIONAL RESOURCES

Ukraine Legal and Regulatory Framework for Rule of Law

Constitution of Ukraine. (1996, 2016). Available at:

<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

Law on the High Council of Justice. (2017). Available at: <https://zakon.rada.gov.ua/laws/show/1798-19#Text>

Law on the Judiciary and the Status of Judges. (2016). Available at: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>

Law on the High Anti-Corruption Court. (2018). Available at: <https://zakon.rada.gov.ua/laws/show/2447-19#Text>

Law on Constitutional Court. (2017). Available at: <https://zakon.rada.gov.ua/laws/show/2136-19#Text>

Law on Free Legal Aid. (2011). Available at: <https://zakon.rada.gov.ua/laws/show/3460-17#Text>

Law on Prevention of Corruption. (2014). Available at: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>

Law on Purification of Government. (2014). Available at: <https://zakon.rada.gov.ua/laws/show/1682-18#Text>

Law on International Commercial Arbitration. (1994). Available at: <https://zakon.rada.gov.ua/laws/show/4002-12#Text>

²⁰ USAID Activity Monitoring, Evaluation, and Learning Plan Guidance <https://www.usaid.gov/project-starter/program-cycle/activity-design/activity-monitor>

²¹ USAID Evaluation Policy <https://www.usaid.gov/sites/default/files/documents/1870/USAIDEvaluationPolicy.pdf>

Law on Domestic Arbitration Courts. (2004). Available at: <https://zakon.rada.gov.ua/laws/show/1701-15#Text>

Law on Preventing and Combating Domestic Violence. (2018, 2019). Available at: <https://zakon.rada.gov.ua/laws/show/2229-19#Text>

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National Strategy on Reforming the Justice for Children System for the Period till 2023. (2018). Available at: <https://zakon.rada.gov.ua/laws/show/1027-2018-%D1%80#Text>

Constitutional Court of Ukraine Opinion on Constitutionality of separate provision of the Law on Judiciary and Status of Judges, Law on High Council of Justice and Law on Amending Law on Judiciary and Status of Judges and Selected Laws Regarding Judicial Governance. (2020). Available at: <https://zakon.rada.gov.ua/laws/show/v004p710-20#Text>

Constitutional Court of Ukraine Opinion on Constitutionality of separate provisions of the Law on Judiciary and Status of Judges regarding the status of the Supreme Court of Ukraine. (2020). Available at: <https://zakon.rada.gov.ua/laws/show/v002p710-20>

USAID and USAID Justice Sector Reform Projects Documents

USAID/Ukraine New Justice Program: <https://newjustice.org.ua/en/>

Facebook: <https://www.facebook.com/usaid.newjustice>

Youtube: <https://www.youtube.com/channel/UCyebQIeEvZZZi0b4iRaHg6Q>

USAID Ukraine Country Development Cooperation Strategy for 2019-2024. Available at: https://www.usaid.gov/sites/default/files/documents/1863/Ukraine_USAID_CDCCS_2019-2024_Public_EN_12.pdf

USAID Collaborating, Learning and Adapting (CLA) Policy <https://usaidlearninglab.org/grq/understanding-cla-0>

USAID Thinking and Working Politically through Applied Political Economy Analysis Approach <https://www.usaid.gov/documents/1866/thinking-and-working-politically-through-applied-political-economy-analysis>

USAID Local Systems Framework For Supporting Sustained Development <https://www.usaid.gov/policy/local-systems-framework>

USAID Policy on Private Sector Engagement (PSE) <https://www.usaid.gov/work-usaid/private-sector-engagement>

USAID Policy On Gender Equality And Female Empowerment <https://www.usaid.gov/policy/gender-female-empowerment>

USAID Journey to Self-Reliance Policy <https://www.usaid.gov/selfreliance>

USAID/Ukraine J2SR Country Roadmap <https://selfreliance.usaid.gov/country/ukraine>

USAID Financing Self Reliance Policy

<https://www.usaid.gov/open/financing-self-reliance>

USAID/Ukraine Gender Analysis Report, 2017

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Analytics, Researches, papers

World Economic Forum Global Competitiveness Index - 2017

https://govdata360.worldbank.org/indicators/hce0ad5fa?country=UKR&indicator=670&viz=line_chart&years=2007,2017

Task Force on Justice, Justice for All – Final Report, 2019 (New York: Center on International Cooperation) https://bf889554-6857-4cfe-8d55-8770007b8841.filesusr.com/ugd/90b3d6_746fc8e4f9404abeb994928d3fe85c9e.pdf

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Justice for Women High Level Group Report by UN Women, IDLO, World Bank and Task Force on Justice, 2019 <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/justice-for-women-high-level-group-report-en.pdf?la=en&vs=4044>

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Judicial Institutions Chart. (2019). Available at: https://newjustice.org.ua/wp-content/uploads/2020/01/Judicial_Institutions_Chart_Dec_2019_ENG.pdf

Report with results of the analysis of the normative framework for corruption prevention in the justice system in Ukraine. (2017). Available at: https://newjustice.org.ua/wp-content/uploads/2018/02/NJ_Anticorruption_Laws_Judiciary_Report_2017_UKR-2.pdf

Recommendations of the Conference “Competition to the new Supreme Court: best practices, lessons learned and perspectives”. (2017). Available at: https://newjustice.org.ua/wp-content/uploads/2018/08/NJ_ScT_Selection_Conference_Recommendations_UKR.pdf

Findings and recommendations of the International Conference and Workshop on the disciplinary liability of judges and prosecutors in Ukraine. (2018). Available at: https://newjustice.org.ua/wp-content/uploads/2019/03/Annex_03_New_Justice_Recommendations_from_Conference_and_Workshop_on_Disciplinary_Liability_Oct_19-21_2018_UKR.pdf

Status of sign language interpreter in litigation. (2020). Available at: https://newjustice.org.ua/wp-content/uploads/2020/05/Guide_sign_language_inter_2020-1.pdf

Analysis of providing equal access to justice for people with disabilities. (2015). Available at: https://newjustice.org.ua/wp-content/uploads/2018/05/Analytical_Report_LAD_2015_combined.pdf

Expanding and Strengthening Legal Clinical Education in Ukraine. Report by Dr.Wortham. (2019). Available at: https://newjustice.org.ua/wp-content/uploads/2020/07/NJ_Legal_Clinics_Report_Wortham_ENG.pdf

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Comprehensive Analyses of Current Context, Barriers and Opportunities for Developing Mediation with Recommendations How to Promote and Implement Mediation in Ukraine (2019). Available at: https://newjustice.org.ua/wp-content/uploads/2019/11/New-Justice_Comprehensive_Analyses_on-Mediation_-for_-Ukraine_Ales_Zalar_ENG-1.pdf

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Other International Documents

Urgent Opinion on the Reform of the Constitutional Court, endorsed by the Venice Commission on 11 December 2020 at its 125th online Plenary Session. Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)039-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)039-e)

Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Legislative Situation regarding anti-corruption mechanisms, following Decision N° 13-R/2020 of the Constitutional Court of Ukraine, endorsed by the Venice Commission on 11 December 2020, at its 125th online Plenary Session. Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)038-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)038-e)

Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the legislative situation regarding anti-corruption mechanisms following Decision No. 13-r/2020 of the Constitutional Court of Ukraine, issued pursuant to article 14a of the Venice Commission's rules of procedure. (2020). Available at:

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)018-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)018-e)

Opinion on the Legal framework in Ukraine governing the Supreme Court and judicial self-governing bodies, adopted by the Venice Commission at its 121st Plenary Session, Venice, 6-7 December 2019. Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)027-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)027-e)

Ukraine - Opinion on the Draft Law on Anticorruption Courts and on the Draft Law on Amendments to the Law on the Judicial System and the Status of Judges (concerning the introduction of mandatory specialization of judges on the consideration of corruption and corruption-related offences) adopted by the Venice Commission at its 112th Plenary Session (Venice, 6-7 October 2017). [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)020-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)020-e)

Joint Opinion of the Council of Europe Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the Law 'on the Judiciary and the Status of Judges' and certain Laws on the activities of the Supreme Court and Judicial Authorities (draft Law no. 3711) (2020). Available at:

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)022-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)022-e)

International Monetary Fund Memorandum of Economic and Financial Policies. (2020). Available at:

<https://www.mof.gov.ua/storage/files/1UKREA2020001.pdf>

Assessment of the Readiness of the Ukrainian Criminal Justice System to Implement the Principles of the Istanbul Convention, prepared by DCAF and La Strada-Ukraine (2017). Available at: <https://www.dcaf.ch/criminal-justice-practice-and-violence-against-women>

OSCE-led Survey on Violence Against Women in Ukraine. (2018). Available at:

https://www.osce.org/files/f/documents/1/3/440312_0.pdf

Venice Commission Rule of Law Check List. Ukrainian Edition with Commentary and Glossary of Terms. (2017). Available at:

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Reports, Assessments, Polls

USAID New Justice Activity Midterm Performance Evaluation in Ukraine.

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NDI survey "Opportunities And Challenges Facing Ukraine's Democratic Transition", 2020

https://www.ndi.org/sites/default/files/August%202020%20Political%20Survey%20-%20Public%20ENG_%20vf.pdf

European Business Association's Foreign Investor Survey 2020 https://eba.com.ua/wp-content/uploads/2020/11/2020_ForeignInvestorSurvey_Presentation_en.pdf

World Justice Project, Access to Justice, Ukraine profile, 2017

<http://data.worldjusticeproject.org/accesstojustice/#!/country/UKR>

International Renaissance Foundation's survey of Legal Needs in Ukraine's Regions, 2018

https://www.irf.ua/sotsiologichne_doslidzhennya_viyavilo_pravovi_potrebi_ta_problemi_v_regionakh_ukraini/

USAID New Justice Program, National Public Survey Regarding Trust in the Judiciary, Judicial Reform and Perception of Corruption, 2018 https://newjustice.org.ua/wp-content/uploads/2018/11/1_NJ_October_2018_SurveyPublic_Results_ENG.pdf

[END OF SECTION C]

SECTION D - PACKAGING AND MARKING

D.1 AIDAR 752.7009 MARKING (JAN 1993)

(a) It is USAID policy that USAID-financed commodities and shipping containers, and project construction sites and other project locations be suitably marked with the USAID emblem. Shipping containers are also to be marked with the last five digits of the USAID financing document number. As a general rule, marking is not required for raw materials shipped in bulk (such as coal, grain, etc.), or for semi-finished products which are not packaged.

(b) Specific guidance on marking requirements should be obtained prior to procurement of commodities to be shipped, and as early as possible for project construction sites and other project locations. This guidance will be provided through the cognizant technical office indicated on the cover page of this contract, or by the Mission Director in the Cooperating Country to which commodities are being shipped, or in which the project site is located.

(c) Authority to waive marking requirements is vested with the Regional Assistant Administrators, and with Mission Directors.

(d) A copy of any specific marking instructions or waivers from marking requirements is to be sent to the Contracting Officer; the original should be retained by the Contractor.

D.2 BRANDING STRATEGY (BS)

Per ADS 320.3.2.1, the Branding Strategy for this Contract is as follows:

- A. Program Name:** The program will be known as the “**USAID Justice for All Activity.**” The USAID Identity (logo and the message that the assistance is from the American people) and activity name must be used on all program reports, memoranda, printed materials and other program-related documents.
- B. USAID Logo:** The USAID logo must be posted at every static support position. The USAID logo must be used on all reports and printed materials produced under **USAID Justice for All Activity.** Contractor employee business cards will be marked so that any person reading the card can know this is a Contractor employee. Contractor employee email and correspondence will be marked so that any person reading the document can know this a Contractor employee. Where required, the USAID logo should be of equal or greater prominence than all other logos and symbols.
- C. Desired level of visibility:** Where required, the USAID Identity should be of equal or greater prominence than all other logos and symbols.
- D. Other organizations to be acknowledged:** No other organizations are required to be acknowledged. The presence of any logo or symbol belonging to the Contractor must conform to the policy in ADS 320 and is subject to negotiation.
- E. Branding Implementation Plan (BIP) and Marking Plan:** Contractor is required to submit a Branding Implementation Plan and Marking Plan prior to award.
- F. Waivers:** Waivers to contract marking requirements could be granted in on compliance with ADS 320.3.2.6.
- G. Exceptions:** Exceptions to contract marking requirements could be granted per the criteria described in ADS 320.3.2.5.

D.3 BRANDING AND MARKING POLICY AND CREATION AND DEVELOPMENT OF WEBSITE

This Activity will be branded and marked in accordance with ADS 320 requirements for USAID direct contracting. Agency policy requires that implementing partners provide a "Branding Implementing Strategy," indicating how they propose to name and promote the USAID-funded programs, and a "Marking Plan," detailing Activity materials that will showcase the USAID identity.

1. A well-defined Branding Implementing Strategy describes how the Activity is named and positioned; how it is promoted and communicated to beneficiaries, and Ukrainian citizens; and how USAID will be identified and acknowledged.
2. A well-defined Marking Plan details the public communications, commodities, and Activity materials and other items that will visibly bear the USAID identity.

The Contractor must comply with the requirements of USAID "Graphic Standards Manual" available at: www.usaid.gov/branding with the policies found at Automated Directives System (ADS) Chapter 320, or any successor branding policy.

Prior to creation and development of any website, the Contractor must receive the approval of the Agency's Website Governance Board (WGB). The WGB, which is a part of the Agency's Management operations Council, will review and approve all requests for new external facing websites. To submit a request to redesign a site or create a new site at: <https://sites.google.com/a/usaid.gov/usaid-gov/request-creation-of-new-website>

D.4 BRANDING IMPLEMENTATION PLAN (BIP) AND MARKING Plan (MP)

Approved Branding Implementation Plan (BIP) and Marking Plan (MP) submitted by the Contractor TBD (to be incorporated at contract award) as ANNEX XX. The Contractor must follow the approved plan during implementation of this contract unless a waiver is requested and approved. Guidance applying for waivers can be found at USAID Automated Directive Supplement Chapter 320, Branding and Marking.

[END OF SECTION D]

SECTION E - INSPECTION AND ACCEPTANCE

E.1 NOTICE LISTING CONTRACT CLAUSES INCORPORATED BY REFERENCE

The following contract clauses pertinent to this section are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with the clause at FAR "52.252-2 CLAUSES INCORPORATED BY REFERENCE" in Section I of this contract. See FAR 52.252-2 for an internet address (<http://acquisition.gov/far/index.html>) for electronic access to the full text of a FAR.

NUMBER	TITLE	DATE
	FEDERAL ACQUISITION REGULATION (48 CFR Chapter 1)	
52.204-14	SERVICE CONTRACT REPORTING REQUIREMENTS	JAN 2014
52.246-3	INSPECTION OF SUPPLIES -- COST-REIMBURSEMENT	MAY 2001
52.246-5	INSPECTION OF SERVICES -- COST-REIMBURSEMENT	APR 1984

E.2 INSPECTION AND ACCEPTANCE

- (a) USAID inspection and acceptance of services, reports and other required deliverables or outputs shall take place at:

U.S. Agency for International Development
USAID/Ukraine
4 Igor Sikorsky Street
04112 Kyiv, Ukraine

- (b) USAID reserves the right to inspect and accept any services, reports, and other required deliverables or outputs where the services are performed and where reports and deliverables or outputs are produced or submitted. The contracting officer has delegated authority to inspect and accept all services, reports, and required deliverables or outputs to the Contracting Officer's Representative (COR) listed in Section G below.

E.3 CONTRACTOR PERFORMANCE EVALUATION

Evaluation of the Contractor's overall performance will be conducted jointly by the Contracting Officer's Representative (COR) and the Contracting Officer (CO), and shall form the basis of the Contractor's permanent performance record with regard to this Contract as required in FAR 42.15 and AIDAR 742.15.

During the period of the Contract, the USAID/COR will conduct periodic performance reviews to monitor the progress of work and the achievement of required results under this Contract. A variety of mechanisms will be used to monitor the progress and success of this award and the Contractor's performance in achieving agreed results:

- Regular meetings with USAID;
- Review the Contractor's scheduled reports (which include updates to the Implementation Plan (Work Plan, fiscal expenditures and accruals, progress reports, consultancy reports (*if any*), etc.);
- Feedback from host government officials; and other counterparts;
- Site visits by USAID personnel;
- Periodic assessments/evaluations;

- Regular planning meetings between USAID and the Contractor to finalize the Initial Implementation Plan and MELP; Annual Implementation Plans and/or identify emerging priorities requiring attention;
- Coordinating meetings with USAID, the Contractor, the host government officials, and other stakeholders as agreed.

[END OF SECTION E]

SECTION F - DELIVERIES OR PERFORMANCE

F.1 NOTICE LISTING CONTRACT CLAUSES INCORPORATED BY REFERENCE

The following contract clauses pertinent to this section are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with the clause at FAR "52.252-2 CLAUSES INCORPORATED BY REFERENCE" in Section I of this contract.

NUMBER	TITLE	DATE
	FEDERAL ACQUISITION REGULATION (48 CFR Chapter 1)	
52.242-15	STOP-WORK ORDER	(AUG 1989)
52.242-15	STOP-WORK ORDER ALTERNATE I	(APR 1984)

F.2 PERIOD OF PERFORMANCE

The period of performance for this contract is five years subject to the conditions set forth in Section H.2.

F.3 PLACE OF PERFORMANCE

The place of performance of this contract is **Ukraine**.

F.4 DELIVERABLES AND REQUIRED REPORTING

In addition to the requirements set forth for submitting of reports in Section I, and in accordance with AIDAR clause 752.242-70, Periodic Progress Reports the Contractor must submit the following plans and report to designated recipients as described below in this section:

- (a) The Contractor must prepare and submit progress reports as specified in the contract schedule. These reports are separate from the interim and final performance evaluation reports prepared by USAID in accordance with FAR § 42.15 and internal Agency procedures, but they may be used by USAID personnel or their authorized representatives when evaluating the Contractor's performance.
- (b) During any delay in furnishing a progress report required under this contract, the Contracting Officer may withhold from payment an amount not to exceed US\$25,000 (or local currency equivalent) or 5 percent of the amount of this contract, whichever is less, until such time as the contractor submits the report or the Contracting Officer determines that the delay no longer has a detrimental effect on the Government's ability to monitor the contractor's progress.

All written documentation (correspondence, reports, information sheets, updates) submitted to USAID must be written in professional-level English.

Reports listed below are required. The cover page of all reports prepared by the Contractor shall include a descriptive title, the author's name(s), the activity name, the activity number, the contract number, the contractor's name, the name of the USAID activity office and COR, and the publication or issuance date of the report.

The Chief of Party (COP) shall be responsible for delivery of draft reports, schedules, plans, and other documents that are described below. Such documents, schedules or plans that do not readily conform to the foregoing format will be presented in a form to be agreed to by COR.

The Contractor will consult the COR on the format and expected content of reports prior to their preparation. All reports shall be submitted by the due date to the USAID/COR.

The following documents shall be consistent, interrelated, and shall complement each other. The Initial Implementation Plan and subsequent work plans shall, based upon the Statement of Work (SOW), define how the Contractor will organize its work to achieve the objectives and expected results outlined in the SOW. Performance reporting shall account for the project's performance against agreed upon activities in the work plan and indicators in the MELP.

The Contractor must comply with the schedule for the submission of each plan and report listed below.

A. PLANS

1) Initial Implementation Plan

Within 30 calendar days after the start date of the Contract, the Contractor shall submit an Initial Implementation Plan to the USAID COR for review and approval (electronic copy). The COR must provide written comments on the draft Plan and when the Plan is finalized, the COR will provide written approval.

The Initial Implementation Plan should include a list of tasks to be completed during the year, grouped under the objective that they seek to support. For each task, the Contractor should 1) explain in brief its connection to the objective; 2) define the necessary steps to complete the tasks; 3) assign responsibilities for completing those steps; 4) provide any quantitative or qualitative targets; and 5) a timeline for the implementation of the task.

The COR will review the Plan and provide comments and recommendations for changes no later than 30 days after receipt of the draft. No later than 15 calendar days after receipt of COR's comments the Contractor will incorporate COR's comments and recommendations into the final version of the Initial Implementation Plan and submit it for COR's written approval. All substantial changes to the Initial Implementation Plan require prior written approval of the COR.

2) Subsequent Annual Implementation Plans (Work Plans)

Subsequent Annual Implementation Plans are due no later than 30 calendar days before the beginning of succeeding contract years. The Contractor shall submit the Annual Implementation Plan to the USAID COR for review and written approval in electronic format. The COR will review the plan and provide comments and recommendations for changes. After the plan is finalized, the COR will provide written approval. All substantial changes in the Initial Implementation Plan require prior written approval of the COR.

The Annual Implementation Plan will describe in detail how the Contractor intends to organize its work under the SOW and achieve expected results within the U.S. Government fiscal year. The Annual Implementation Plan shall include the description and delivery schedule of the pre-program, implementation, and post-program activities. The Annual Implementation Plan shall be consistent with the MELP.

Specifically, the Annual Implementation Plan shall include a detailed analysis of the context and the factors driving or obstructing judicial reform, including: (1) the underlying interests and incentives of those sectors, groups, political actors, and non-political actors at the local and national level who are advocates of change or oppose change; and (2) how these factors relate to program implementation. The Plan shall also include a proposed schedule of interventions, a listing of principal counterparts for each proposed interventions, and a description and estimate of the amounts of technical expertise, training, and other support resources required to carry out the interventions. Plans shall

also describe the expected results for each interventions or combination of interventions and shall explain how and to what extent those results will contribute to achieving the project's overall sub-objectives and objectives. Through its quarterly reports, the Contractor may propose to USAID updates or revisions to the annual work plan based on changing priorities and contextual factors.

Work plans may be revised to reflect changes in the operating environment or USAID/Embassy priorities, with the prior written approval of the COR. The work plan will allow USAID and the Contractor to monitor performance as appropriate. USAID reserves the right to review and re-approve the Annual Working Plan on an as-needed basis.

3) Monitoring, Evaluation and Learning Plan (MELP)

Based on the draft MELP submitted as a part of its Proposal, the Contractor will develop a detailed Monitoring, Evaluation and Learning Plan (MELP) to monitor performance data, ensure progress is made towards expected results, understand the impact of new interventions on outcomes, and to use data to adapt activity implementation as necessary to achieve activity results.

Within the first 30 calendar days of the signing the Contract and before major activity implementation actions begin, the Contractor shall submit an activity MEL Plan together with the Initial Implementation Plan to the USAID COR for review and approval.

The COR will review the plan and provide comments and recommendations for changes no later than 30 days after receipt of the draft. The Contractor shall incorporate COR comments and recommendations into the final version of the MEL Plan and submit it for COR written approval within 15 days. After the plan is finalized, the COR will provide written approval. All substantial changes in the MEL Plan require prior written approval of the COR.

Activity MEL Plan submitted to USAID should include only those indicators that the USAID Mission needs for activity management, rather than the entire set of all indicators an activity implementer uses for its management purposes. The number of indicators reported to USAID should not exceed fifteen.

USAID is currently rolling out the New Partnership Initiative (NPI) and applying the new Agency-wide approach to measuring improved performance of new and underutilized partners through developing their organizational capacity. The Implementing Partner will be required to collect and analyze data related to the standard cross-cutting CBLD-9 indicator *Percent of USG-assisted organizations with improved performance*. The Implementing Partner will reach out to USAID for further guidance.

Activity budget must include costs of data collection, analysis, and reporting as a separate line item to ensure that adequate resources are available.

The MEL Plan should include a comprehensive strategy for monitoring and reporting progress made towards activity purpose and results. The MEL Plan should contain the following required elements:

- activity purpose and results as well as brief description of the linkages between the activity outputs and its expected results;
- performance indicators and their descriptions;
- unit of data measurement;
- data sources;
- description of data collection methods;
- baseline information (year and value) or a timeline for collecting it;
- annual targets;
- disaggregation by sex, age, geographic locality, type of assistance, etc. as needed;
- rationale for indicator and target;
- reporting level;
- data limitations;

- schedule for data collection;
- names of individuals responsible for data collection;
- availability of data at USAID;
- detailed plans for data analysis, review and reporting; and,
- Learning Section.

The Implementer must prepare the Performance Indicator Reference Sheets (PIRS) for each indicator in its MELP.

The MEL Plan for this Activity will also be consistent with and meet the data collection needs of the Democratic Governance Project (2019) MEL Plan, the USAID's Performance Management Plan (PMP), and the Mission's annual Performance Plan and Report (PPR).

Performance indicators should comply with the following criteria: direct, objective, practical, adequate, and useful in managing for results. MEL Plan data should be based on US fiscal year.

According to USAID regulations, performance indicator data reported externally, including annual Performance Reports sent to USAID/Washington, must have a data quality assessment (DQA). The purpose of the DQA is to ensure that managers are aware of the strengths and weaknesses of the data and the extent to which the data can be trusted to influence management decisions. DQA must be conducted within twelve months prior to reporting data to USAID for new indicators, and every three years thereafter. Conducting DQA on a rolling basis will reduce the burden of handling indicators all at once.

To be useful in managing for results and credible for reporting, USAID/COR or a third party contractor designated by USAID/Ukraine should ensure that the performance data meet the following five data quality standards: validity, reliability, timeliness, precision and integrity. If performance data do not fully meet all five standards, the known data limitations should be documented. The COR can combine a random check of partner data during a regularly scheduled site visit and include data quality items into site visit reports. This minimizes the costs associated with the DQA. When conducting a DQA, USAID/COR or a third party contractor designated by USAID/Ukraine will examine the data in light of the five quality standards noted above, reviewing the systems and approaches for collecting data and whether they are likely to produce data of an acceptable quality over time.

USAID/COR or a third party contractor designated by USAID/Ukraine conducts the DQA. This may entail site visits to physically inspect records maintained by the activity implementing partner. The activity USAID/COR or a third party contractor designated by USAID/Ukraine will document DQA findings, including decisions concerning data quality problems and steps identified to address them. The findings will be shared with the implementer and an action plan to address data quality issues will be developed with the COR. The COR will follow up with the activity implementer to check progress on implementation of the action plan within the timeline outlined in the action plan against each action.

The M&E Plan is subject to final approval by USAID and is separate from the regular financial and other reports required by the standard Contract provisions.

USAID reserves the right to propose an activity implementer to integrate into the MEL Plan a number of indicators to help USAID measure the immediate activity results.

USAID may elect to organize and carry out an independent performance evaluation of this activity. The activity implementer shall fully cooperate with USAID and the evaluation team to ensure that the evaluation accurately reflects activity results, outcomes, and/or impacts.

Collaborating, Learning and Adapting (CLA)

The Activity is expected to contribute to USAID/Ukraine's commitment to a multi-faceted Collaborating, Learning and Adapting (CLA) approach to development. The CLA approach is based on the understanding that development efforts yield more effective results if they are coordinated and collaborative, test promising, new approaches in a continuous yet also rapid, targeted search for generating improvements and efficiencies, and build on what works and eliminate what doesn't.

- **Collaborating:** Justice for All (J4A) activity will coordinate with other USG partners, other donors, civil society, development partners, and the Government of Ukraine *to advance justice for all by strengthening justice systems, services, and societal engagement to deliver responsive solutions to Ukrainians' legal problems and justice needs.* For J4A to succeed, the Contractor will employ a collaborative approach with other Justice sector reform implementers (including donors), and other stakeholders, including the Host Government Institutions, Ministries, Judicial institutions, local governments, relevant educational institutions, and civil society development actors, exchanging knowledge and ensuring complementarity, rather than duplication, of activities.
- **Learning:** J4A will systematically and continuously review evidence from program implementation and external sources to inform program strategy, design and management. J4A will generate evidence through program performance data, formative research to guide design of new interventions, periodic evaluations, and operational research - documenting and sharing results with stakeholders.
- **Adapting:** J4A will translate learning from the implementation experience and external sources, while also considering changing conditions that impact achievement of expected results into strategic and programmatic adjustments throughout the course of the activity. A key feature of J4A will be its flexibility to rapidly adapt to the operating environment in order to effectively advance justice for all, strengthen justice systems, services, and societal engagement, and deliver responsive solutions to Ukrainians' legal problems and justice needs.

NOTE: The MEL Plan must be developed strictly in accordance with the criteria stipulated in [ADS 201](#).

4) Demobilization and Closeout Plan

Four (4) months prior to the completion date of the Contract, the Contractor must submit a Demobilization and Closeout Plan to the COR with a copy to the CO for approval. The Demobilization and Closeout Plan must include at a minimum: a draft Property Disposition Plan; a plan for the phase out of in-country operations; a delivery schedule for all reports and other deliverables required under the Contract; and a timeline for completing all required actions in the Demobilization and Closeout Plan to the COR and CO. Both the draft and final Property Disposition Plans shall address all requirements under U.S. and Ukrainian law for the transfer of property and shall include the inventory schedule required by FAR 52.245-1, a plan for the disposition of property to eligible parties and a timeline for disposition of such property.

The USAID/COR will approve or disapprove the proposed plan in writing, at least 60 days prior to the completion of the Contract. However, regardless of any prior approval of all or portions of the proposed disposition plan for assets, USAID reserves the right to direct or redirect such disposition plan.

5) Branding Implementation Plan (BIP) and Marking Plan (MP)

The Contractor's Branding Implementation Plan and Marking Plan will be finalized and submitted for Contracting Officer approval prior to award. The Contractor must follow the approved plan during implementation of this contract unless a waiver is requested and approved. Guidance applying for waivers can be found at USAID Automated Directive Supplement Chapter 320, Branding and Marking.

6) Grants Manual

Within 90 calendar days after the start date of the Contract, the Contractor must provide a Grants Management Manual for COR's review and CO review and approval. The Contractor must follow ADS 302 and ADS 303 in all respects as well as all relevant rules and regulation. The Contractor may proceed with the award of grants upon receipt of notice to proceed from the USAID Contracting Officer.

It is preferred that the Contractor submits a corporate/organization wide grants manual, rather than creating a separate set of policies and procedures exclusively for this program.

B. REPORTS

Program Performance Management USAID views overall program performance management as an iterative, collaborative approach in which assessment, planning, and design are continuous processes requiring ongoing rolling analysis and real-time monitoring and evaluation to assure flexibility and responsiveness of the program. The Contractor is responsible for specific results under the process, but must work with USAID to ensure that contract results contribute to higher-level program objectives within the CDCS. The Contractor must support this continuous process through annual strategy reviews and an integrated monitoring and evaluation system with a logic framework.

1) Quarterly Performance Reports

Within 15 calendar days after the end of the Fiscal Year quarter, the Contractor shall submit quarterly performance reports to the COR.

These reports must summarize the outcomes of the Contractor's activities during the particular reporting period, document any program accomplishments or progress towards results during the reporting period, compare those results to the planned tasks in the Work Plan and MEL Plan, and discuss any potential constraints that might prevent the Contractor from meeting agreed upon targets and benchmarks. These reports should include a description and analysis of results achieved, problems encountered and proposed solutions, planned activities not completed, lessons learned, planned activities for the next quarter, and factors influencing (positively or negatively) the prospects for achievement of program results. Any failure in regard to progress towards achieving established results, benchmarks, milestones and indicators must be documented and clearly justified. Any required or recommended changes or updates to the work plan will also be included in quarterly technical reports. Finally, each quarterly report shall include information that demonstrates the impact that the program has had during the reporting period on its beneficiaries. This shall include the preparation of fact sheets and success stories, including photos and quotations.

Quarterly Geospatial Reporting information and Activity Location data must be provided (see below F.4.B (6) (d)).

The quarterly report covering the 4th quarter of each U.S. Government fiscal year will provide USAID *annual* data on the agreed upon performance indicators as well as any additional qualitative results information the Contractor would like to include to demonstrate the results achieved vis-à-vis the project's objectives during that particular reporting period. The fourth quarterly report is due by October 30 of each year.

2) Quarterly Financial and Accrual Report

The report must be submitted to the COR in conjunction with the Quarterly Performance Report. The report must have a financial summary page that lists the amounts expended for the quarter by major cost item, showing cumulative expenditures to date, and a variance analysis. The variance analysis must use the detailed budget in the cost proposal submitted for the contract award, as the baseline budget plan, and, as requested, must be able to explain significant actual expenditure variance in relation to the detailed baseline. The Contractor must include a brief note on any significant or accrued expenditures for the quarter that have not yet been billed to the contract, along with the specific amount involved, to enable the COR to accurately track the expenditure rate.

Quarterly accrual reports must be submitted to USAID and provide contractual information pertaining to the following information:

- Total Estimated Cost remaining in the contract;
- Unliquidated obligations in the contract by main line items;
- Accrual amount;
- Estimated Pipeline amount;
- Projected expenditures for next quarter;
- Estimate to Complete Contract; and
- Estimate at Completion of Contract.

The Contractor is solely responsible for not exceeding obligated amounts, and is reminded of the required notification to the CO as to the percentage of funds expended against the total obligated and available amount as set forth in FAR § 52.232-22 "Limitation of Funds."

3) Annual Performance Reports

The Contractor shall submit to the USAID COR annual reports within 30 calendar days after the end of the U.S. Government fiscal year. Annual reports shall be submitted in lieu of quarterly reports for the last quarter of a fiscal year (by October 30 of each year). The annual report shall be comprehensive and summarize the accomplishments and evaluate the impact of the project in terms of reaching its goals and anticipated results as well as provide a final summary budget for the previous year. The annual report will summarize any challenges in project implementation encountered over the previous year and provide recommendations for the future programs. Media, such as photographs of participant experiences during the programs are expected.

The annual report shall be comprehensive and provide details, as described in the quarterly report, on accomplishments, results and activity financial information for the previous year, and include monthly budget forecasts for the ensuing year. The reports shall include at least the following sections, and link directly to the tasks and results listed in the Statement of Work (SOW):

- Overview of the Project including the current status of affairs, key achievements to date, and explanation on deviations in implementation of the previous work plan;
- Performance management section that should address the progress toward achieving the previously set targets, any modifications to project implementation driven by the achievement of or failure to achieve targets and expected results;
- MEL Plan that reflects actual versus target values of the program performance monitoring indicators;
- Budget execution section, clearly showing the actual versus planned expenditures, as well as a forecast of expenditures for the remainder of the project;
- Program environmental compliance report;
- Administration and project management section including project staffing;

- A list of counterparts/beneficiaries actively involved in the project with their contact information and a very brief description of their role in the project (to be included as an annex); and
- A copy of all reports, success stories, and other relevant documents prepared during that year (as annexes).

USAID will work with the Contractor during to provide specific guidance on what should be included in the annual summary report.

4) Property Report

The Contractor must submit an annual report on all non-expendable property in a form and manner acceptable to USAID. The report is due 30 calendar days following the end of the USG Fiscal Year (see AIDAR 752.245-70).

5) Final Report

Within 30 calendar days before the completion date of the contract, the Contractor must prepare and submit a detailed final report.

The Final Report will include, but not be limited to:

- a financial report showing, by line item, the amounts expended;
- presentation of success stories;
- a summary of the accomplishments achieved under this contract;
- a discussion of problems encountered and a discussion where objectives were not achieved;
- lessons learned;
- suggestions concerning possible future, follow-on programs;
- a description of all nongovernmental institutions worked with in connection with program components and an evaluation of their strengths and weaknesses; and
- an estimate and/or a description of the program's achievements.

The Contractor must submit all relevant reports to the Development Experience Clearinghouse (DEC).

The final/completion report must also contain an index of all reports and information products produced under this contract. The Contractor must submit the final report to USAID/Ukraine COR and to the Contracting Officer (CO) via email.

6) Special Reports

As USAID/Ukraine program needs dictate, the Contractor may be required to submit additional project technical and financial information data, presentations, reports or other documents to the COR. This will include submission of data and reports as requested.

a. Outreach and Communication:

USAID conducts public affairs efforts to highlight the role and contribution of U.S. assistance programs in Ukraine as a way to raise public awareness, understanding, and support for USG-funded goals and activities. The Contractor must enhance USAID's outreach and communications efforts in two dimensions. The first dimension is outreach to domestic audiences, focused on describing and explaining USAID's efforts to support Ukrainian partners to advance justice for all Ukrainians by delivering responsive solutions to Ukrainians' legal problems and justice needs. The second dimension, if appropriate, is increase of public and private commitment and community support to ensure program success and sustainability by publicizing success stories. USAID encourages the Contractor to coordinate training activities with counterparts across sectors to

strengthen their outreach efforts to build and support external commitment. Toward this end, the Contractor must prepare and share with USAID updated fact sheets and at least one success story describing the impact of the program in each quarterly technical report. In addition, the Contractor must coordinate with the COR and USAID's Development Outreach and Communications Office to provide information on the assistance programs and activities, and collaborate on public diplomacy events and VIP visits.

The Contractor must prepare a web and social media strategy that identifies how internet, YouTube, Twitter, Facebook and other platforms will be employed to increase outreach to stakeholders and access to Activity resources. At a minimum, the Contractor must launch and update as needed an Activity website and use social media to engage the public.

b. Other Materials:

The Contractor must provide to the COR copies of any training or instructional materials, assessments, analytical materials, reports and other programmatic documents produced under this contract as an annex to the quarterly or annual reports. In addition, the Contractor must prepare briefing memoranda, scene-setters, and talking points for events in which USAID personnel participate.

c. Weekly Updates to the COR:

These will be submitted to the COR as an e-mail in professional-level English. Weekly reporting should be written in the form of brief paragraphs summarizing and analyzing key interventions and results, as well as upcoming events and important political or other events that relate to programs. These reports are due on a mutually agreed-upon day each week at close of business (2-5 line paragraphs no more than two pages). USAID may share weekly reports with the Ambassador, the Mission Director, Europe and Eurasia Bureau, or other US Government stakeholders.

d. Geospatial Reporting Requirements:

Activity Location Data: The Contractor must submit Activity Location Data to indicate the geographic location or locations where the activity is implemented according to the following requirements:

I. Level of Geographic Detail

The activity location(s) must be recorded at the National: whole Ukraine; Sub-national: oblast, rayon; and Local: municipal/city or town, amalgamated communities. When collected, latitude and longitude coordinates must be submitted in Decimal Degrees (hddd.ddddd) with at least five decimal places using the Geographic Coordinate System World Geodetic System 1984 (GCS WGS 1984) spatial reference.

II. Data Submission Frequency

Activity Location Data must be submitted twice annually as part of the 2nd Quarterly Performance Report and the Annual Report. If the Activity Location Data has not changed since the previous data submission, it must be indicated when the data is submitted.

III. Data Submission Method

Activity Location Data shall be compiled in the "General Info & Locations" worksheet in the Geographic Location Report Template (GLR) and submitted electronically. If Activity Location Data exists in a Geographic Information Systems (GIS) format: 1) it must also be submitted in a Shapefile (.shp) or GeoJSON (.geojson) file format; 2) use the Geographic Coordinate System World Geodetic System 1984 (GCS WGS 1984) spatial reference; and 3) include metadata ISO 19115 using the ISO 19139 XML implementation schema.

Geospatial Reporting information and Activity Location Data must be submitted as part of the Quarterly Performance Reports (See Section F.4.B (1)).

e. Dataset Reports to DDL (Section H.31)

The data elements must be submitted at least quarterly throughout the entire life of the award.

f. Short-Term Technical Assistance/Consultant Reports:

Upon completion of the services of each short-term technical assistance (STTA) or independent consultant, the Contractor must submit a report to the COR summarizing the activities, accomplishments and recommendations of the assignment. Reports must clearly show the relevance and linkage of the STTA/consultant's activities to the overarching goals of the activity.

C. REPORTING AND PLAN SUMMARY MATRIX

Following is a summary of the list of the required reports specified in the contract that must be submitted electronically to the Approver identified herein (see table below) by the established due dates.

SUMMARY OF PLANS:

No.	Type of Plan	Due Date	Approver
1.	Initial Implementation Plan	Within 30 calendar days after the start date of the contract.	COR
4.	Subsequent Annual Implementation Plans (Work Plans)	Within 30 calendar days before the beginning of succeeding contract years.	COR
5.	Monitoring, Evaluation, and Learning Plan (MELP)	Within 30 calendar days after the start date of the contract.	COR
7.	Demobilization & Closeout Plan	120 calendar days before the end of contract award.	COR
8.	Final Branding Implementation Plan and Marking Plan	To be incorporated at contract award.	CO
8.	Grants Manual	Within 90 calendar days after the start date of the contract.	CO

SUMMARY OF REPORTS:

No	Type of Plan	Due Date	Approver
1.	Quarterly Performance Reports	Within 15 calendar days after the end of each USAID fiscal quarter. The Q4 report can be combined with the Annual Report.	COR
2.	Quarterly Financial & Accruals Reports	Within 30 calendar days of the end of each USAID fiscal quarter.	COR

3.	Annual Performance Reports	Within 30 calendar days of the end of each USAID fiscal year.	COR
4.	Property Report	Annual: Within 30 calendar days after the end of each USAID fiscal year. Final: 4 months prior to the end of contract award.	COR
5.	Final Report	30 calendar days before contract completion date.	COR
6.	Special Reports: (subsections a-c)	Upon COR request	COR
7.	Special Reports: <i>d. Geospatial Reporting Requirements</i>	Submitted as part of the Quarterly Performance Reports.	COR
8.	Special Reports: <i>e. Submission of Datasets</i>	Initial: 30 calendar days after the dataset has first been used. Final: Within 30 calendar days after contract completion.	DDL & COR
9.	Special Reports: <i>f. STTA/Consultant Reports</i>	Within 15 calendar days after completion of assignment or upon COR request.	COR

Note: USAID's fiscal year starts on October 1 and ends on September 30. Four fiscal quarterly periods begin on October 1, January 1, April 1 and July 1.

- a) The cover page of all reports must include the USAID identity (U.S. Agency for International Development/Ukraine or USAID/Ukraine) prominently displayed, the contract number, Contractor name, name of the USAID activity office (Office of Democracy and Governance), the publication or issuance date of the document, document title, author name(s), activity number, and activity title. Descriptive information is required whether Contractor-furnished products are submitted in paper or electronic form. All materials must include the name, organization, address, and telephone/internet number of the person submitting the materials.
- b) Only upon request hard copy reports could be prepared on non-glossy paper (preferable recycled and white or off-white) using black prints. Elaborate art work, multi-color printing, and expensive binding are not to be used. Whenever possible, pages must be printed on both sides.
- c) Electronic formats must be submitted with the following descriptive information:
 1. Operating system format, e.g. Windows;
 2. The format for any graphic and/or image files included, e.g., jpeg, TIFF-compatible;
 3. Any other necessary information, e.g.; special backup or data compression routines/software used for storing/retrieving submitted data.
- d) All PDF files that are submitted must be unlocked.

F.5 ONE-TIME DELIVERABLES

The following table lays out the one-time deliverables. All deliverables may be submitted electronically.

Deliverable	Description	Due Date	Distribution
Initial Implementation Plan	Section F.4.A.1)	30 calendar days after the start date of the contract.	Electronically to COR, presentation to Mission may be requested
Activity Monitoring, Evaluation, and Learning Plan (MELP)	Section F.4.A.3)	Within 30 days after the start date of the contract.	Electronically to COR
GUC Manual	Section F.4.A.6) and Section H.27	90 days after the start date of the contract.	Electronically to CO, COR

F.6 KEY PERSONNEL

(a) The key personnel who the contractor must furnish for the performance of this contract are as follows:

Position:

Chief of Party (COP) or equivalent title
Deputy Chief of Party (DCOP) or equivalent title

Key Personnel and Qualifications:

The Contractor must employ the following Key Personnel on USAID J4A:

1. Chief of Party (COP) or equivalent title

The COP shall be responsible for overall technical and administrative management of the Justice for All (J4A) Activity, including:

- Exemplary leadership, vision and direction for the Program.
- Ongoing analysis of strategic communications, the political/reform context, and overall justice sector environment.
- Strategic and operational planning, including timely preparation of the annual implementation plan.
- Effective coordination and engagement with justice sector institutions and all Activity wide range of stakeholders across the public, private, and other donor sectors.
- Maintaining a productive partnership relationship with USAID.
- Managing and developing staff, sub-contractors, and consultants to achieve expected results.
- Ensuring high quality standards of technical assistance and support to Activity stakeholders.
- Overseeing an effective and accountable Grants under Contract system.
- Ensuring compliance with USAID, USG and GOU laws, regulations, policies and procedures.
- Other tasks as required to achieve the Objectives and Expected Results.

The Chief of Party must have the following minimum qualifications:

- Experience successfully implementing donor-funded international development activities, with preference given to implementing activities related to rule of law, judicial and/or legal reform projects. At least five (5) years of this experience implementing donor-funded development activities must be in senior program management, meaning that the candidate must have five (5) years' experience managing teams of 20 or more people in an office/organization responsible for implementing technical assistance activities in a developing country context.
- Demonstrated track record of collaborating and communicating successfully with the USG, with officials at all relevant levels of host country governments as well as other donors.
- A demonstrated track record of building and effectively managing strong teams.
- Native or fluent English.

Additionally, USAID prefers the Chief of Party to have the following:

- Minimum of ten (10) years' experience in international judicial reform or other areas relevant to J4A.
- A master's degree or above in law, or a graduate degree in rule of law, civil justice, or other subjects related to the focus of J4A.
- Prior experience in managing international donor programs in Central and Eastern Europe, or the former Soviet Union.
- Ukrainian language skills.

2. Deputy Chief of Party (DCOP) or equivalent title

The DCOP shall perform those tasks of the COP as delegated to the DCOP by the COP.

The Deputy Chief of Party must have the following minimum qualifications:

- Experience in the successful implementation of international development activities with preference given to implementing activities related to rule of law, judicial and/ or legal reform projects.
- Demonstrated ability to establish strong working relationships with government officials, non-governmental organizations and other donors.
- Excellent knowledge of written and spoken English.

Additionally, USAID prefers the Deputy Chief of Party to have the following:

- Minimum of three (3) years' experience in international judicial reform or other areas relevant to J4A.
- A degree in law, rule of law, civil justice, or other subjects related to the focus of J4A.
- Fluency in Ukrainian.

- (b) The key personnel identified above are considered essential to the work being performed under this contract. The Contractor must remain responsible for providing such key personnel for full-time performance for the term of this contract unless otherwise agreed to by the Contracting Officer.
- (c) The failure to provide the key personnel designated above may be considered nonperformance unless such failure is beyond the control, and through no fault or negligence, of the Contractor.
- (d) The Contractor must immediately notify the Contracting Officer and the COR of any key personnel's departure and the reasons therefore.

- (e) The Contractor must take steps to immediately rectify this situation and will propose a substitute candidate for each vacated position along with a budget impact statement in sufficient detail to permit evaluation of the impact on the program.
- (f) The key personnel are not limited to expatriates or U.S. citizens. USAID seeks to emphasize its support for capacity building and professional development of Ukrainian staff, and the Contractor is encouraged to maximize use of local experts in key positions over the life of the activity and seek meaningful gender balance in its overall staffing.
- (g) Prior to replacing any of the specified individuals, the Contractor must notify both the Contracting Officer and COR reasonably in advance and must submit written justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the activity.
- (h) No replacement of key personnel must be made by the Contractor without the written consent of the Contracting Officer whether provided in advance or by ratification. The Contracting Officer will approve the key personnel.

F.7 OTHER PERSONNEL

As needed, the Contractor must provide a broad range of other technical expertise to carry out the multiple components of this activity. The Contractor must engage the services of expert local (preferred) or expatriate (U.S. or TCN) technical advisors on a long- or short-term basis to provide expertise in areas not possessed by other staff including sub-Contractors. Such advisors must have high technical and professional qualifications and their use in each case must be appropriate based on their professional qualifications and experience.

F.8 AIDAR 752.7005 - SUBMISSION REQUIREMENTS FOR DEVELOPMENT EXPERIENCE DOCUMENTS (SEPTEMBER 2013)

The Contractor must comply with AIDAR 752.7005, "Submission Requirements for Development Experience Documents (SEPTEMBER 2013)", which provides in full:

(a) Contract Reports and Information/Intellectual Products.

(1) Within thirty (30) calendar days of obtaining the Contracting Officer Representative's approval, the contractor must submit to USAID's Development Experience Clearinghouse (DEC) one copy each of reports and information products which describe, communicate or organize program/project development assistance activities, methods, technologies, management, research, results and experience. These reports include: assessments, evaluations, studies, technical and periodic reports, annual and final reports, and development experience documents (defined as documents that (1) describe the planning, design, implementation, evaluation, and results of development assistance; and (2) are generated during the life cycle of development assistance programs or activities.) The Contractor must also submit copies of information products including training materials, publications, databases, computer software programs, videos and other intellectual deliverable materials required under the Contract Schedule. The following information is not to be submitted:

(i) Time-sensitive materials such as newsletters, brochures or bulletins.

(ii) The contractor's information that is incidental to award administration, such as financial, administrative, cost or pricing, or management information.

(2) Within thirty (30) calendar days after completion of the contract, the contractor must submit to the DEC any reports that have not been previously submitted and an index of all

reports and information/intellectual products referenced in paragraph (a)(1) of this clause.

(b) Submission requirements. The contractor must review the DEC Web site for the most up-to-date submission instructions, including the DEC address for paper submissions, the document formatting and the types of documents to be submitted. The submission instructions can be found at: <https://dec.usaid.gov/dec/home/Default.aspx>

(1) Standards.

(i) Material must not include financially sensitive information or personally identifiable information (PII) such as social security numbers, home addresses and dates of birth. Such information must be removed prior to submission.

(ii) All submissions must conform to current USAID branding requirements.

(iii) Contract reports and information/intellectual products can be submitted in either electronic (preferred) or paper form. Electronic documentation must comply with Section 508 of the Rehabilitation Act of 1973.

(iv) The electronic submissions must consist of only one electronic file, which comprises the complete and final equivalent of the paper copy. In the case of databases and computer software the submissions must also include necessary descriptive information, e.g., special backup or data compression routines, software used for storing/retrieving submitted data, or program installation instructions.

(v) Electronic documents must be in one of the National Archives and Records Administration (NARA)-approved formats as described in NARA guidelines related to the transfer of permanent E-records. (See <http://www.archives.gov/records-mgmt/initiatives/transfer-to-nara.html>).

(2) Essential bibliographic information. Descriptive information is required for all Contractor products submitted. The title page of all reports and information products must include the contract number(s), contractor name(s), name of the USAID Contracting Officer's Representative, the publication or issuance date of the document, document title, (if non-English, provide an English translation of the title), author name(s), and development objective or activity title (if non-English, provide a translation) and associated number, and language of the document (if non-English). In addition, all hard copy materials submitted in accordance with this clause must have, attached as a separate cover sheet, the name, organization, address, telephone number, fax number, and Internet address of the submitting party.

F.9 PERFORMANCE STANDARDS

USAID will evaluate the Contractor's performance in accordance with FAR § 42.15, corresponding USAID procedures, and the Contractor's adherence to the annual work plan, reporting against its Monitoring, Evaluation and Learning (MEL) Plan, and quality of reports described in Section F. USAID will evaluate the Contractor's performance during the initial, intermediate, and final periods of the contract in accordance with the Contractor Performance Assessment Reporting System (CPARS). The Contracting Officer and the COR will jointly conduct the annual evaluation of the contractor's overall performance. This evaluation will form the basis of the contractor's permanent performance record under this contract. The following general performance standards must form the basis of the evaluation for the Contractor Performance Assessment Report (CPAR):

1. Quality of Product and Service
2. Schedule
3. Cost Control/Effectiveness
4. Management

5. Regulatory Compliance

F.10 PROGRAM EVALUATION

Evaluation enables the Mission to account for success and failure, and to assist management decision making. Evaluation also offers opportunity to learn from prior experience, identify the results of innovative approaches to problems, and inform future project design by recognizing prior successes or failures and drawing conclusions on the cause.

USAID/Ukraine intends to conduct at least one evaluation of the USAID Justice for All (J4A) Activity. A mid-term program performance evaluation will inform the Mission on overall activity progress towards higher-level outcomes as well as any necessary course-correction in the second half of activity implementation. The Mission may elect to conduct a final performance evaluation of the Activity or to include the Activity or its components in evaluating progress towards higher level project and/or strategy-level outcomes. Deviations in meeting performance indicator targets for intermediate results, as well as significant changes in the operating environment, could trigger unplanned performance evaluations of the Activity. The Contractor must fully cooperate with USAID and the evaluation team to ensure that the evaluation accurately reflects activity results, outcomes, and/or impacts.

Sample evaluation questions for the Activity may include:

- To what extent has the activity advanced the overarching objective, three supporting objectives, and achieved the expected results?
- To what extent are changes in public trust of the justice system and support for judicial reform in whole or in part a result of Activity interventions?
- To what extent has the Activity and USAID effectively enabled strategic collaboration on justice reform implementation and strengthening initiatives among other international donors?
- What outcomes have been achieved as a result of collaboration with the Embassy and international donors related to judicial reform?
- What J4A tools and approaches have been most effective in advancing activity objectives?
- What Activity results will be (may be) sustainable without USAID support?

F.11 GOVERNMENT PROPERTY—USAID REPORTING REQUIREMENTS

The contractor must comply with AIDAR 752.245-70 “Government Property—USAID Reporting Requirements (October 2017)”, which provides in full:

752.245-70 Government property—USAID reporting requirements (October 2017)

(a) (1) The term Government-furnished property, wherever it appears in the following clause, shall mean (i) non-expendable personal property owned by or leased to the U.S. Government and furnished to the contractor, and (ii) personal property furnished either prior to or during the performance of this contract by any U.S. Government accountable officer to the contractor for use in connection with performance of this contract and identified by such officer as accountable. All mobile Information Technology (IT) equipment, including but not limited to, mobile phones (e.g. smartphones), laptops, tablets, and encrypted devices provided as government furnished property, title to which vests in the U.S. Government, are considered accountable personal property.

(2) The term Government property, wherever it appears in the following clause, shall mean Government-furnished property, Contractor acquired mobile IT equipment and non-expendable personal property title to which vests in the U.S. Government under this contract.

(3) Non-expendable personal property, for purposes of this contract, is defined as personal property

that is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and that has a unit cost of more than \$500.

(b) *Reporting Requirement:* to be inserted following the text of the (48 CFR) FAR clause.

Reporting Requirements: The contractor will submit an annual report on all non-expendable property in a form and manner acceptable to USAID substantially as follows:

ANNUAL REPORT OF GOVERNMENT PROPERTY IN CONTRACTOR'S CUSTODY

[Name of contractor as of (end of contract year), 20XX]

	Motor vehicles	Furniture and furnishings—		Other Government
		Office	Living quarters	
A. Value of property as of last report				
B. Transactions during this reporting period				
1. Acquisitions (add):				
a. Contractor acquired property ¹				
b. Government furnished ²				
c. Transferred from others, without reimbursement ³				
2. Disposals (deduct):				
a. Returned to USAID				
b. Transferred to USAID—contractor purchased				
c. Transferred to other Government agencies ³				
d. Other disposals ³				
C. Value of property as of reporting date				
D. Estimated average age of contractor held property				
	Years	Years	Years	Years

¹Non-expendable property and all mobile IT equipment.

²Government furnished property listed in this Contract as nonexpendable or accountable, including all mobile IT equipment.

³Explain if transactions were not processed through or otherwise authorized by USAID.

Property Inventory Verifications

I attest that (1) physical inventories of Government property are taken not less frequently than annually; (2) the accountability records maintained for Government property in our possession are in agreement with such inventories; and (3) the total of the detailed accountability records maintained agrees with the property value shown opposite line C above, and the estimated average age of each category of property is as cited opposite line D above.

Authorized Signature

Name

Title

Date

F.12 AUDIT

The Contractor will be subject to audit standards and procedures based on USAID regulations and GAAP.

[END OF SECTION F]

SECTION G - CONTRACT ADMINISTRATION DATA

G.1 ADMINISTRATIVE CONTRACTING OFFICE

- (a) The Contracting Officer(s) in the Regional Contracting Office (RCO) at USAID/Ukraine have the authority to administer this contract.

The Administrative Contracting Office is located at the address below:

<u>Diplomatic Pouch Address</u>	<u>Physical Address</u>
USAID/Ukraine/RCO Department of State 5850 Kyiv Pl. Washington D.C. 20521-5850	USAID/Ukraine Regional Contracting Office 4 Igor Sikorsky Street 04112 Kyiv, Ukraine

- (b) The Contractor will submit any questions concerning the administration of this contract to the Regional Contracting Office (RCO) at USAID/Ukraine. Technical questions will be submitted to the COR.
- (c) It is the Contractor's sole responsibility to inform the Contracting Officer of any requests that will affect any and all sections of the contract.

G.2 CONTRACTING OFFICER'S AUTHORITY

The Contracting Officer is the only person authorized to make or approve any changes in the requirements of this contract and notwithstanding any provisions contained elsewhere in this contract, the said authority remains solely in the Contracting Officer. In the event the Contractor makes any changes at the direction of any person other than the Contracting Officer, the change must be considered to have been made without authority and no adjustment must be made in the contract terms and conditions, including price.

G.3 CONTRACTING OFFICER'S REPRESENTATIVE (COR)

- (a) The Contracting Officer's Representative (COR) for this contract is **TBD**.
- (b) The COR will be appointed by a separate letter. The Contracting Officer will provide a copy of the COR designation letter to the Contractor after award.

G.4 TECHNICAL DIRECTIONS/RELATIONSHIP WITH USAID

- (a) Technical Directions is defined to include:
- (1) Written directions to the contractor which fill in details, suggest possible lines of inquiry, or otherwise facilitate completion of work.
 - (2) Provision of written information to the contractor which assists in the interpretation of drawings, specifications, or technical portions of the work statement.
 - (3) Review and, where required, provide written approval of technical reports, drawings, specifications, or technical information to be delivered. Technical directions must be in writing, and must be within the scope of the work as detailed in Section C.

(b) The COR is authorized by designation to take any or all action with respect to the following which could lawfully be taken by the Contracting Officer, except any action specifically prohibited by the terms of this Contract:

- (1) Assure that the contractor performs the technical requirements of the contract in accordance with the contract terms, conditions, and specifications.
- (2) Perform or cause to be performed, inspections necessary in connection with a) above and require the contractor to correct all deficiencies; perform acceptance for the Government.
- (3) Maintain all liaison and direct communications with the contractor. Written communications with the contractor and documents must be signed as "Contracting Officer's Representative" with a copy furnished to the Contracting Officer.
- (4) Issue written interpretations of technical requirements of Government drawings, designs, and specifications.
- (5) Monitor the contractor's production or performance progress and notify the contractor in writing of deficiencies observed during surveillance, and direct appropriate action to effect correction. Record and report to the Contracting Officer incidents of faulty or nonconforming work, delays or problems.
- (6) Obtain necessary security clearance and appropriate identification if access to Government facilities is required. If to be provided, ensure that Government furnished property is available when required.

LIMITATIONS: The COR is not empowered to award, agree to, or sign any contract (including delivery or purchase orders) or modifications thereto, or in any way to obligate the payment of money by the Government. The COR may not take any action which may impact on the contract schedule, funds, scope or rate of utilization of LOE. All contractual agreements, commitments, or modifications which involve prices, quantities, quality, and schedules must be made only by the Contracting Officer.

- (c) The COR is required to meet quarterly/semi-annually/annually with the contractor and the Contracting Officer concerning performance of items delivered under this contract and any other administration or technical issues. Telephonic reports may be made if no problems are being experienced. Problem areas must be brought to the immediate attention of the Contracting Officer.
- (d) In the separately-issued COR designation letter, the CO designates an alternate COR to act in the absence of the designated COR, in accordance with the terms of the letter.
- (e) Contractual Problems - Contractual problems, of any nature, that may arise during the life of the contract must be handled in conformance with specific public laws and regulations (i.e. Federal Acquisition Regulation and Agency for International Development Acquisition Regulation). The contractor and the COR must bring all contracting problems to the immediate attention of the Contracting Officer. Only the Contracting Officer is authorized to formally resolve such problems. The Contracting Officer will be responsible for resolving legal issues, determining contract scope and interpreting contract terms and conditions. The Contracting Officer is the sole authority authorized to approve changes in any of the requirements under this contract. Notwithstanding any clause contained elsewhere in this contract, the said authority remains solely with the Contracting Officer. These changes include, but will not be limited to, the following areas: scope of work, price, quantity, technical specifications, delivery schedules, and contract terms and conditions. In the event the contractor effects any changes at the direction of any other person other than the Contracting Officer, the change will be considered to have been made without authority.

- (f) Failure by the contractor to report to the Administrative Contracting Office, any action by the Government considered to a change, within the specified number of days contained in FAR 52.243-7 (Notification of Changes), waives the contractor's right to any claims for equitable adjustments.
- (g) In case of a conflict between this contract and the COR designation letter, the contract prevails.

G.5 ACCEPTANCE AND APPROVAL

- (a) The COR must accept and approve all deliverables before receipt of final payment.

G.6 PAYING OFFICE

- (a) The Office of Financial Management (OFM) located in USAID/Ukraine will serve as the paying office for this contract.

The paying office is located at the address below:

<u>Diplomatic Pouch Address</u>	<u>Physical Address</u>
USAID/Ukraine/RCO Department of State 5850 Kyiv Pl. Washington D.C. 20521-5850	USAID/Ukraine Office of Financial Management 4 Igor Sikorsky Street 04112 Kyiv, Ukraine

G.7 DOCUMENTATION OF PAYMENT (CPFF)

AIDAR 752.7003, "Documentation for Payment," (NOV 1998) provides in full:

- i. Claims for reimbursement or payment under this contract must be submitted directly to the Paying Office indicated in the schedule of this contract. The Prompt Payment Clock will not start until a proper voucher has been received by the Finance Office. The Contractor must submit either paper or fax versions of the SF-1034--Public Voucher for Purchases and Services Other Than Personal. Each voucher must be identified by the appropriate USAID contract number, in the amount of dollar expenditures made during the period covered.
 - 1. Providing a proper voucher - The SF 1034 provides space to report by line item for products or services provided. The form provides for the information to be reported with the following elements:

TOTAL EXPENDITURES (Document Number XXX-X-XX-XXXX-XX)			
Line Item	Description	Amt. Vouchered to Date	Amt. Vouchered this Period
0001	Product/Service Desc. for Line Item 0001	\$XXXX.XX	\$XXXX.XX
0002	Product/Service Desc. for Line Item 0002	\$XXXX.XX	\$XXXX.XX
Total		\$XXXX.XX	\$XXXX.XX

- 2. The fiscal report must include the following certification signed by an authorized representative of the Contractor:

The undersigned hereby certifies to the best of my knowledge and belief that the fiscal report and any attachments have been prepared from the books and records of the Contractor in accordance with the terms of this contract and are correct: the sum claimed under this contract is proper and due, and all the costs of contract performance (except as herewith reported in writing) have been paid, or to the extent allowed under the applicable payment clause, will be paid currently by the Contractor when due in the ordinary course of business; the work reflected by these costs has been performed, and the quantities and amounts involved are consistent with the requirements of this Contract; all required Contracting Officer approvals have been obtained; and appropriate refund to USAID will be made promptly upon request in the event of disallowance of costs not reimbursable under the terms of this contract.

BY: _____

TITLE: _____

DATE: _____

- ii. Local currency payment. The contractor is fully responsible for the proper expenditure and control of local currency, if any, provided under this contract. Local currency will be provided to the Contractor in accordance with written instructions provided by the Mission Director. The written instructions will also include accounting, vouchering, and reporting procedures. A copy of the instructions must be provided to the contractor's Chief of Party and to the contracting officer. The costs of bonding personnel responsible for local currency are reimbursable under this contract.
- iii. Upon compliance by the contractor with all the provisions of this contract, acceptance by the Government of the work and final report, and a satisfactory accounting by the contractor of all Government-owned property for which the contractor had custodial responsibility, the Government must promptly pay to the contractor any moneys (dollars or local currency) due under the completion voucher. The Government will make suitable reduction for any disallowance or indebtedness by the contractor by applying the proceeds of the voucher first to such deductions and next to any unliquidated balance of advance remaining under this contract.
 - iv. The Contractor agrees that all approvals of the Mission Director and the contracting officer which are required by the provisions of this contract must be preserved and made available as part of the Contractor's records which are required to be presented and made available by the clause of this contract entitled "Audit and Records—Negotiation."

G.8 INVOICING INSTRUCTIONS

Electronic invoice copies (SF-1034) will be sent to the email address voucher-kyv-ofm@usaid.gov with a copy to the COR's email address. No physical invoices are required nor will be accepted.

- Send via email, one invoice, all other required supporting documents, and SF-1034 Public Voucher for Purchases and Services Other Than Personal.
- The SF-1034 must be signed.
- The invoice must provide the bank account details, including the bank account number, the bank name and address, the SWIFT Code and the ABA number.

G. 9 ACCOUNTING AND APPROPRIATION DATA

A. Data TBD at contract award:

REQUISITION:

Distribution:

Bureau:

Operating Unit:

Program Area:

Program Element:

Fund Code:

Fund Year:

EOCC:

Amount:

B. Contractor Specific Information:

DUNS: _____

TIN: _____

[END OF SECTION G]

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 NOTICE LISTING CONTRACT CLAUSES INCORPORATED BY REFERENCE

The following contract clauses pertinent to this section are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with the clause at FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE" in Section I of this contract. The full text of a clause may be accessed electronically at these addresses:

AIDAR: <http://www.usaid.gov/policy/ads/300/aidar.pdf>

FAR: <http://www.acquisition.gov>

NUMBER	TITLE	DATE
	Agency for International Development Acquisition Regulation (48 CFR Chapter 7)	
752.7027	Personnel	(DEC 1990)
752.228-70	Medical Evacuation (MEDEVAC) Services	(JULY 2007)
722.170	Employment of Third Country Nationals (TCNs) and Cooperating Country Nationals (CCNs)	

H.2 FAR PART 4.21 PROHIBITION ON CONTRACTING FOR CERTAIN COVERED TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (SECTION 889) (JANUARY 2021)

(a) The award of this contract is based on the Section 889 Foreign Assistance Waiver USAID received from the Director of National Intelligence (DNI), which expires on September 30, 2022. Accordingly, the Contractor must submit the FAR 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, to the Contracting Officer, as soon as the contractor is no longer using any covered technology but no later than March 31, 2022.

(b) In addition to the disclosure requirements at FAR 52.204–24(e), if the contractor represents that it does use covered telecommunications equipment or services, the Contractor must describe the circumstances (including in-country circumstances) where the Contractor uses covered technology. This must include:

1. identification of whether the covered equipment and/or services are provided by third-party communications service providers, such as the internet, phone, utilities, or others;
2. the specific country(ies) where it is used; and
3. a description of the presence of any other covered technology, whether in any internal systems or elsewhere in the supply chain.

(c) If the contractor continues to use covered technology as of March 31, 2022 and there is no applicable waiver in place, the contract period of performance will end on September 30, 2022, as the Contractor is no longer legally eligible for an award. The Contractor will only be entitled to costs incurred through the period of performance including close-out costs. The contractor is not entitled to settlement costs associated with Termination for Convenience (FAR part 49). Any applicable fee will be adjusted commensurate with work completed as of September 30, 2022.

H.3 LANGUAGE REQUIREMENTS

(a) The Contractor will produce all reports and deliverables in English.

- (b) The Contractor must ensure the Contractor's employees and consultants possess the appropriate level of skill in written and spoken English and local language proficiency, as needed, to perform the contract requirements.
- (c) Contractor key personnel and/or consultants must have English and local language proficiency as needed, to perform contract requirements.

H.4 AIDAR 752.225-70 SOURCE AND NATIONALITY REQUIREMENTS (FEB 2012)

- (a) Except as may be specifically approved by the Contracting Officer, the Contractor must procure all commodities (e.g., equipment, materials, vehicles, supplies) and services (including commodity transportation services) in accordance with the requirements at 22 CFR Part 228 "Rules on Procurement of Commodities and Services Financed by USAID Federal Program Funds." The authorized source for procurement is Geographic Code 937 unless otherwise specified in the schedule of this contract (see Section H.4). Guidance on eligibility of specific goods or services may be obtained from the Contracting Officer.
- (b) Ineligible goods and services. The Contractor must not procure any of the following goods or services under this contract:
 - (1) Military equipment
 - (2) Surveillance equipment
 - (3) Commodities and services for support of police and other law enforcement activities
 - (4) Abortion equipment and services
 - (5) Luxury goods and gambling equipment, or
 - (6) Weather modification equipment.
- (c) Restricted goods. The Contractor must obtain prior written approval of the Contracting Officer or comply with required procedures under an applicable waiver as provided by the Contracting Officer when procuring any of the following goods or services:
 - (1) Agricultural commodities,
 - (2) Motor vehicles,
 - (3) Pharmaceuticals and contraceptive items
 - (4) Pesticides,
 - (5) Fertilizer,
 - (6) Used equipment, or
 - (7) U.S. government-owned excess property.

If USAID determines that the Contractor has procured any of these specific restricted goods under this contract without the prior written authorization of the Contracting Officer or fails to comply with required procedures under an applicable waiver as provided by the Contracting Officer, and has received payment for such purposes, the Contracting Officer may require the contractor to refund the entire amount of the purchase.

H.5 AUTHORIZED GEOGRAPHIC CODE

The authorized geographic codes for procurement of goods and services under this contract are 937 and 110. Code 937 is defined as the United States, the cooperating/country, and developing countries other than advanced developing countries, and excluding prohibited sources. Code 110 is defined as the United States, the independent states of the former Soviet Union, or developing country, but excluding any country that is a prohibited source. Procurement of Agricultural commodities and related products, motor vehicles and pharmaceuticals is subject to the limitations in 22 CFR 228.19 and will require a waiver.

For more information on Source and Nationality Requirements see ADS 310 and (RFP, Attachment J.5 – Identification of Principle Geographic Codes, of the RFP).

H.6 DEFENSE BASE ACT (DBA) INSURANCE (NOVEMBER 2020)

INSURANCE AND SERVICES

- a) Pursuant to AIDAR 752.228-3 Worker's Compensation Insurance (Defense Base Act), USAID's DBA insurance carrier is: Allied World Assurance Company (AWAC) under USAID contract # AID-OAA-C-16-00015 as of December 1, 2015.

A. RATES

Contract Year	Period of Performance	Services	Construction	Security
Base Period	12/1/15 - 11/30/17	\$2.00	\$4.50	\$7.50
Option 1	12/1/17 - 11/30/18	\$2.00	\$4.50	\$7.50
Option 2	12/1/18 - 11/30/19	\$2.00	\$4.50	\$7.50
Option 3	12/1/19 - 11/30/20	\$2.00	\$4.50	\$7.50
Extension	12/1/20 - 5/31/21	\$2.00	\$4.50	\$7.50 unless further revised

Notes:

For Option Periods 1, 2 and 3, the percentage of USAID security payroll would be measured as of the last day of the preceding period (i.e. the base period or the immediately preceding option period), which is referred to as the "measurement date".

- 1) If at the measurement date, the percentage of USAID security payroll remains between 0-10.0% of total payroll, the security rate in the next option period will be \$7.50/\$100 employee remuneration.
- 2) If at the measurement date, the percentage of USAID security payroll is above 10.0% to 25.0% of total payroll, the security rate in the next option period will be \$10.00/\$100 employee remuneration.
- 3) If at the measurement date, the percentage of USAID security payroll exceeds 25.0% of total payroll, the security rate in the next option period will be \$12.50/\$100 employee remuneration.

- 4) ***The term "wages" means the money rate at which the service rendered by an employee is compensated by an employer under the contract of hiring in force at the time of the injury, including the reasonable value of any advantage which is received from the employer and included for purposes of any withholding of tax under subtitle C of the Internal Revenue Code of 1954 [26 USC §§ 3101 et seq.] (relating to employee taxes). The term wages does not include fringe benefits, including (but not limited to) employer payments for or contribution to a retirement, pension, health and welfare, life insurance, training, social security or other employee or dependent benefit plan for the employee's or dependent's benefit, or any other employee's dependent entitlement.***

Maximum rate of compensation shall not exceed 200 per centum of the applicable national average weekly wage (NAWW) as calculated by the Secretary of Labor. The current NAWW can be found at

<http://www.dol.gov/owcp/dlhwc/nawwinfo.htm>

- 5) The new rate structure aligns DBA rates to the likelihood that specific types of contracts will incur different frequency of DBA payouts and of differing dollar amounts. Those having greater risk pay greater premiums. Those with anticipated lower risk pay lesser premiums. The concept is to associate specific costs to a contract predicated upon the potential DBA risks under the same contract. The risk is predicated on the nature and inherent danger of certain categories of contracts (and performance under those awards).
- 6) For contracts that include Aviation, ground crews shall be categorized as Construction, and flight crew shall be categorized as Security.

Upon the Option Year being exercised, the contractor must confirm in writing, the security payroll percentage as of the measurement date of the preceding period of performance to the CO.

B. OBTAINING DBA COVERAGE

Contractors must apply for coverage directly to AON Risk Insurance Services Inc., the agent for AWAC DBA Insurance. For instructions on the required application form and submission requirements, contact the following office:

AON Risk Insurance Services West, Inc. 2033 N.
Main St., Suite 760
Walnut Creek, CA 94596-3722

Hours: 8:30 A.M. to 5:00 PM, Pacific Time

Primary Contact: Fred Robinson
Phone: (925) 951-1856
Fax: (925) 951-1890
Email: Fred.Robinson@aon.com

C. NOTICE OF EXCLUSION OF MEDICAL EVACUATION COVERAGE

Pursuant to AIDAR 752.228-70, medical evacuation insurance is a separate insurance requirement for overseas performance of USAID contracts; the Defense Base Act insurance does not provide coverage for medical evacuation.

D. WAIVERS FOR THIRD COUNTRY AND LOCAL NATIONALS

The list of countries with active DBA waivers is available at <http://www.dol.gov/owcp/dlhwc/dbawaivers/dbawaivers.htm>. In accordance with ADS 302, Missions may obtain a country-based waiver by sending a request to M/OAA Evaluation Division at dbawaiverrequests@usaid.gov.

H.7 USAID DISABILITY POLICY—ACQUISITION (DEC 2004)

(a) The objectives of the USAID Disability Policy are (1) to enhance the attainment of United States foreign assistance program goals by promoting the participation and equalization of opportunities of individuals with disabilities in USAID policy, country and sector strategies, activity designs and implementation; (2) to increase awareness of issues of people with disabilities both within USAID programs and in host countries; (3) to engage other U.S. government agencies, host country counterparts, governments, implementing organizations and other donors in fostering a climate of nondiscrimination against people with disabilities; and (4) to support international advocacy for people with disabilities. The full text of the policy paper can be found at the following website: http://pdf.usaid.gov/pdf_docs/PDABQ631.pdf

(b) USAID therefore requires that the contractor not discriminate against people with disabilities in the implementation of USAID programs and that it make every effort to comply with the objectives of the USAID Disability Policy in performing this contract. To that end and within the scope of the contract, the contractor's actions must demonstrate a comprehensive and consistent approach for including men, women and children with disabilities."

H.8 REPORTING OF FOREIGN TAXES (JUL 2007)

(a) The contractor must annually submit a report by April 16 of the next year.

(b) Contents of report. The report must contain:

(1) Contractor name.

(2) Contact name with phone, fax number and email address.

(3) Contract number(s).

(4) Amount of foreign taxes assessed by a foreign government [each foreign government must be listed separately] on commodity purchase transactions valued at \$500 or more financed with U.S. foreign assistance funds under this agreement during the prior U.S. fiscal year.

(5) Only foreign taxes assessed by the foreign government in the country receiving U.S. assistance are to be reported. Foreign taxes by a third party foreign government are not to be reported. For example, if a contractor performing in Lesotho using foreign assistance funds should purchase commodities in South Africa, any taxes imposed by South Africa would not be included in the report for Lesotho (or South Africa).

(6) Any reimbursements received by the contractor during the period in paragraph (b)(4) of this clause regardless of when the foreign tax was assessed and any reimbursements on the taxes reported in paragraph (b)(4) of this clause received through March 31.

(7) Report is required even if the contractor did not pay any taxes during the reporting period.

(8) Cumulative reports may be provided if the contractor is implementing more than one program in a foreign country.

(c) Definitions. As used in this clause—

(1) Agreement includes USAID direct and country contracts, grants, cooperative agreements and interagency agreements.

(2) Commodity means any material, article, supply, goods, or equipment.

(3) Foreign government includes any foreign governmental entity.

(4) Foreign taxes mean value-added taxes and customs duties assessed by a foreign government on a commodity. It does not include foreign sales taxes.

(d) (Where. Submit the reports to: Office to Financial Management, USAID Mission to Ukraine, Belarus and Moldova, 4 Igor Sikorsky Street, 04112 Kyiv, Ukraine by hand or by air courier or to: Office of Financial Management, USAID Mission to Ukraine, and Belarus, Dept. of State, 5850 Kiev Place, Washington, D.C. 20521-5850 by U.S. mail. Reports may also be sent electronically to tskripka@usaid.gov.

(e) Subagreements. The contractor must include this reporting requirement in all applicable subcontracts and other subagreements.

(f) For further information see <http://2001-2009.state.gov/s/d/rm/c10443.htm>.

H.9 AIDAR 752.7007 PERSONNEL COMPENSATION (JULY 2007)

- (a) Direct compensation of the Contractor's personnel will be in accordance with the Contractor's established written policies, procedures, and practices, and the cost principles applicable to this contract.
- (b) Reimbursement of the employee's base annual salary plus overseas recruitment incentive, if any, which exceed the USAID Contractor Salary Threshold (USAID CST) stated in USAID Automated Directives System (ADS) Chapter 302 USAID Direct Contracting, must be approved in writing by the Contracting Officer, as prescribed in 731.205-6(b) or 731.371(b), as applicable.

H.10 ADDITIONAL REQUIREMENTS FOR PERSONNEL COMPENSATION

(a) Limitations:

(1) If, during contract performance, the contractor proposes salary or wages for a new individual(s) that exceeds **10%** of the individual's current salary or wage or the highest rate of annual salary or wage received during any full year of the immediately preceding three (3) years, the Cognizant Contracting Officer's approval is required.

(2) In addition, there is a ceiling on the reimbursable base salary or wage paid to personnel under the Contract equivalent to the maximum annual salary rate specified in section H.8 above unless an advance written waiver is granted by the USAID Procurement Executive.

(b) Salaries during Travel

Salaries and wages paid while in travel status will not be reimbursed for a travel period greater than the time required for travel by the most direct and expeditious air route.

(c) Return of Overseas Employees

Salaries and wages paid to an employee serving overseas who is discharged by the Contractor for misconduct, inexcusable nonperformance, or security reasons will in no event be reimbursed for a period which extends beyond the time required to return him/her promptly to his/her point of origin by the most direct and expeditious air route.

(d) Annual Salary Increases

Annual salary increases (e.g. cost of living and merit increases and other) for the **current labor pool** may be granted once a year and cannot exceed 5%. Annual salary increases of any kind exceeding this limitation or exceeding the USAID Contractor Salary Threshold (CST) may be granted only with the advance written approval of the Contracting Officer.

(e) Definitions

As used herein, the terms "Salaries," "Wages," and "Compensation" mean the periodic remuneration received for professional or technical services rendered, exclusive of any of the differentials or allowances defined in the clause of this contract entitled "Differentials and Allowances" (AIDAR 752.7028), unless otherwise stated. The term "compensation" includes payments for personal services (including fees and honoraria). It excludes earnings from sources other than the individual's professional or technical work, overhead, or other charges under the contract.

(f) Additional Requirements/Clarifications for Personnel Compensation

Salaries and benefits for non-US personnel shall also be in accordance with AIDAR 722.170, Employment of Third Country Nationals (TCNs) and Cooperating Country Nationals (CCNs). Salaries and benefits for CCNs and TCNs may not exceed the Local Employee Compensation Plan (LCP), as periodically amended, without prior approval of the Contracting Officer. Contractors and subcontractors shall obtain signed SF-1420-17 Forms, Biographical Data Sheet, for all field personnel working under this contract, and shall retain them for audit purposes and periodic review by USAID/Ukraine/RCO. This clause in its entirety is applicable to subcontracts for professional services, and the term "Contractor" used herein also refers to "Subcontractor."

Any work that may be performed off-site by the COP shall be approved in writing, in advance by the COR.

Consultants

Any consultant's daily or hourly compensation shall be negotiated with due regard for prevailing compensation levels for similar consulting services, and shall not exceed the highest rate of compensation received by the consultant during the immediately preceding three years. Annual increases are not authorized for consultants.

H.11 USAID PERSONNEL APPROVALS

- (a) No replacement of key personnel must be made by the Contractor without the prior written approval of the Contracting Officer.
- (b) The Contractor shall not engage any new or replacement professional personnel (including long-term employees and short-term consultants) to work under the contract without prior written approval of the COR. COR approval is technical approval of professional personnel and does not include the review of biodata or the approval of rates. However, if, during contract performance, the contractor proposes salary or wages for a new individual(s) that exceeds **10%** of the individual's current salary or wage or the highest rate of annual salary or wage received during any full year of the immediately preceding three (3) years, the CO's review of bio data and approval of personnel and the rate is required.
- (c) The Contracting Officer may require dismissal from this contract of those individuals which he/she deems incompetent, careless, insubordinate, unsuitable or otherwise objectionable, or whose continued employment he/she deems contrary to the public interest or inconsistent with the best interest of national security.

H.12 AIDAR 752.7032 INTERNATIONAL TRAVEL APPROVAL AND NOTIFICATION REQUIREMENTS (APRIL 2014) AND AIDAR 752.7027 PERSONNEL

In accordance with the above clauses, the Contracting Officer hereby provides prior written approval for international travel, provided that concurrence with the assignment of individuals outside the United States is obtained by the Contractor, in writing, from the COR prior to their assignment abroad, which must be within the terms of this contract, is subject to availability of funds, and should not be construed as authorization either to increase the estimated cost or to exceed the obligated amount (see Section B). The Contractor shall retain for audit purposes a copy of each travel concurrence.

Prior written approval by the Contracting Officer's Representative (COR) (as delegated in the Contracting Officer's Representative Designation Letter), is required for all international travel directly and identifiably funded by USAID under this contract. The Contractor must therefore present to the contracting officer or the contracting officer's representative, an itinerary for each planned international trip, showing the name of the traveler, purpose of the trip, origin/destination (and

intervening stops), and dates of travel, as far in advanced of the proposed travel as possible, but in no event less than three weeks before travel is planned to commence.

The Contracting Officer's Representative's prior written approval may be in the form of a letter or by e-mail. At least one week prior to commencement of approved international travel, the Contractor must notify the cognizant Mission, with a copy to the Contracting Officer or Contracting Officer's Representative, of planned travel, identifying the travelers and the dates and times of arrival.

H.13 GOVERNMENT FURNISHED FACILITIES OR PROPERTY

(a) The Contractor and any employee or consultant of the Contractor is prohibited from using U.S. Government facilities (such as office space or equipment) or U.S. Government clerical or technical personnel in the performance of the services specified in the Contract unless the use of Government facilities or personnel is specifically authorized in the Contract or is authorized in advance, in writing, by the COR.

(b) If at any time it is determined that the Contractor, or any of its employees or consultants, have used U.S. Government facilities or personnel either in performance of the Contract itself, or in advance, without authorization in writing, by the Contracting Officer, then the amount payable under the Contract will be reduced by an amount equal to the value of the U.S. Government facilities or personnel used by the Contractor, as determined by the Contracting officer.

(c) If the parties fail to agree on an adjustment made pursuant to this clause it will be considered a "dispute" and will be dealt with under the terms of the "Disputes" clauses of the Contract.

H.14 LOGISTIC SUPPORT

The Contractor is responsible for furnishing all logistic support in the United States and overseas unless otherwise stated in the contract.

The USAID/Ukraine Program Office will assist the Contractor with project registration, accreditation, customs and tax exemption issues, property transfers at contract closeout, etc. The contact person is Ms. Tatiana Kistanova, Program Management Specialist, tel: (380-44) 525-5736, e-mail: tkistanova@usaid.gov.

The Contractor must address all requirements under U.S. and local law for the transfer of property and shall provide the inventory schedule required by FAR 52.245-1. The proposed property disposition shall be approved in writing by the Contracting Officer.

H.15 FRAUD REPORTING

The Contractor is required to report on indications of fraud in host-country institutions or other matters that could reasonably be expected to be of foreign policy interest to the U.S. Government's development and stabilization efforts. Corruption, real or perceived, may critically impact USAID programming objectives as might other knowledge the Contractor acquires in its normal course of business. This clause must not be construed to require the Contractor to conduct investigation for such information outside of its normal business practices or to report on matters not directly or indirectly related to USAID programming or the proper use of U.S. Government funds. In the event awardee has special non-disclosure requirements or confidentiality requirements (such as prevalent in the legal and banking industries), or Contractor determines such reporting would conflict with applicable laws, Contractor must include a proposal to obtain any necessary waivers from the applicable host-country institution allowing such reporting to the maximum extent possible. Reports under this requirement must be submitted as a deliverable under the award.

H.16 DISCLOSURE OF INFORMATION

- (a) Contractors are reminded that information furnished under this solicitation may be subject to disclosure under the Freedom of Information Act (FOIA). Therefore, all items that are confidential to business, or contain trade secrets, proprietary, or personnel information must be clearly marked. Marking of items will not necessarily preclude disclosure when the U.S. Office of Personnel Management (OPM or The Government) determines disclosure is warranted by FOIA. However, if such items are not marked, all information contained within the submitted documents will be deemed to be releasable.
- (b) Any information made available to the Contractor by the Government must be used only for the purpose of carrying out the provisions of this contract and must not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract.
- (c) In performance of this contract, the Contractor assumes responsibility for protection of the confidentiality of Government records and must ensure that all work performed by its subcontractors must be under the supervision of the Contractor or the Contractor's responsible employees.
- (d) Each officer or employee of the Contractor or any of its subcontractors to whom any Government record may be made available or disclosed must be notified in writing by the Contractor that information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such information, by any means, for a purpose or to an extent unauthorized herein, may subject the offender to criminal sanctions imposed by 19 U.S.C. 641. That section provides, in pertinent part, that whoever knowingly converts to their use or the use of another, or without authority, sells, conveys, or disposes of any record of the United States or whoever receives the same with intent to convert it to their use or gain, knowing it to have been converted, must be guilty of a crime punishable by a fine of up to \$10,000, or imprisoned up to ten years, or both.

H.17 ORGANIZATIONAL CONFLICTS OF INTEREST

Any concerns/issues related to Organizational Conflict of Interest prior to or during the performance of this contract **must** be brought to the attention of the contracting officer as soon as it appears. See CIB 99-17: <http://www.usaid.gov/work-usaid/aapds-cibs/cib-99-17>

H.18 CONFLICT OF INTEREST

- (a) It is understood and agreed that some of the work required hereunder may place the contractor, or its personnel or its subcontractors or their personnel (hereinafter referred to collectively as "contractor"), in the position of having a potential personal or organizational conflict of interest (OCI), i.e., because of other activities or relationships with other persons, (1) the contractor is unable or potentially unable to render impartial assistance or advice; or (2) the contractor's objectivity in performing the contract is or might be impaired; or (3) the contractor may receive an unfair competitive advantage; or (4) the contractor may have a financial or other personal interest which would or potentially would impair his/her objectivity and/or from which he/she would improperly benefit. Further discussion of OCIs may be found in FAR 9.5, Organizational and Consultant Conflicts of Interest.
- (b) The performance/actions of personnel under this contract will be imputed to the contractor (or subcontractor(s) by whom they are employed or retained, and the performance/actions of any subcontractor will be imputed to the contractor, unless the contractor, on a case-by-case basis, can demonstrate otherwise and satisfy the contracting Officer that such imputation is unreasonable.
- (c) In accordance with the clause of this contract entitled "Organizational Conflicts of Interest Discovered After Award" (AIDAR 752.209-71), the Contractor agrees not to undertake any activity

which may involve a personal conflict of interest or an OCI without first notifying the contracting officer of such potential conflict and receiving the contracting officer's authorization to undertake that activity.

(d) If the potential conflict relates to performance of the work hereunder (e.g., where the contractor is to evaluate an activity in which the contractor had some previous involvement, thereby rendering the contractor unable or potentially unable to provide impartial assistance or advice, or impairing or potentially impairing the contractor's objectivity), and the contracting officer cannot neutralize, mitigate, or avoid the conflict, the contracting officer may decline to authorize performance of that work by the contractor.

(e) If the potential conflict relates to future activities (e.g., where the contractor is to perform a needs assessment, feasibility study, or design/development of a project or activity to be procured under another contract for which the contractor will or might compete or which may be awarded noncompetitively to the contractor, thereby potentially providing an unfair competitive advantage to the contractor, and/or rendering the contractor unable or potentially unable to provide impartial assistance or advice, or impairing or potentially impairing the contractor's objectivity; or where the work under this contract might affect the personal or financial interests of the contractor), the contracting officer may decline to authorize performance of that work by the contractor or, if such work is authorized, the contracting officer may place restrictions on the contractor's future activities, as permitted by FAR 9.5, and as necessary to neutralize, mitigate, or avoid the potential conflict.

(f) The contracting officer's approval to undertake such activities, if given, may be based on the contracting officer's determination that a significant potential conflict does not exist or does not appear to exist, or may be conditioned on the acceptance by the contractor of restrictions on the contractor's future activities. If restrictions are to be placed on future activities, the contractor may decline to perform the work.

(g) If it is discovered that the contractor engaged in any activities which constitute a potential or actual conflict without having first obtained the contracting officer's approval to undertake such activities; or if it is subsequently discovered that, notwithstanding the contracting officer's authorization to undertake the activity based on his/her initial determination that no significant potential conflict existed or appeared to exist, a conflict did, in fact exist or arise, restrictions, as permitted by FAR 9.5, on the contractor's future activities may be placed unilaterally by the contracting officer for this contract or the contracting officer for such other contract as may be involved in the conflict, and other remedies (including termination of this contract for default, debarment or suspension, and those permitted by the clauses of this contract entitled "Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity" (FAR 52.203-8 JAN 1997) and "Price or Fee Adjustment for Illegal or Improper Activity" (FAR 52.203-10 JAN 1997), may be taken by USAID.

(h) If it is discovered that the contractor engaged in any activities in violation of the restrictions placed by a contracting Officer on the contractor's future activities, other remedies (including termination of this contract for default, debarment or suspension, and those permitted by the clauses of this contract entitled "Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity" (FAR 52.203-8) and "Price or Fee Adjustment for Illegal or Improper Activity" [FAR 52.203-10]), may be taken by USAID.

(i) Nothing in this provision precludes the application of any other remedies available to USAID by law, regulation, or other provisions of this contract.

H.19 ORGANIZATIONAL CONFLICTS OF INTEREST: PRECLUSION FROM IMPLEMENTATION CONTRACT (SEPTEMBER 2018)

This contract requires the Contractor to furnish important services in support of the design of various impact and performance evaluations and potentially other activities. In accordance with the principles

of FAR Subpart 9.5 and USAID policy, the Contractor will be ineligible to furnish, as a Prime or Subcontractor or otherwise, the implementation services for the activity, unless the Head of the Contracting Activity authorizes a waiver (in accordance FAR 9.503 and AIDAR 709.503) determining that preclusion of the Contractor from the implementation contract would not be in the Government's interest.

H.20 ORGANIZATIONAL CONFLICTS OF INTEREST: PRECLUSION FROM FURNISHING CERTAIN SERVICES AND RESTRICTION ON USE OF INFORMATION (SEPTEMBER 2018)

(a) This contract requires the Contractor to furnish services in support of the evaluation of the CDCS. In accordance with the principles of FAR Subpart 9.5 and USAID policy, the Contractor will be ineligible to furnish, as a Prime or Subcontractor or otherwise, the implementation services under any contract or task order that results in response to findings, proposals, or recommendations in the evaluation report within 18 months of USAID accepting the report, unless the Head of the Contracting Activity authorizes a waiver (in accordance FAR 9.503) determining that preclusion of the Contractor from the implementation work would not be in the Government's interest.

(b) In addition, by accepting this contract, the Contractor agrees that it will not use or make available any information obtained about another organization under the contract in the preparation of proposals or other documents in response to any solicitation for a contract or task order.

(c) If the Contractor gains access to proprietary information of other company(ies) in performing this evaluation, the Contractor must agree with the other company(ies) to protect their information from unauthorized use or disclosure for as long as it remains proprietary, and must refrain from using the information for any purpose other than that for which it was furnished. The Contractor must provide a properly executed copy of all such agreements to the CO.

H. 21 ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY (APRIL 2018)

(a) Definitions "Information and Communication Technology (ICT) means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include, but are not limited to: computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; Web sites; videos; and, electronic documents. (Appendix A to Part 1194 – Section 508 of the Rehabilitation Act).

(b) Federal agencies are required by Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), to offer access to information and communication technology for disabled individuals within its employment, and for disabled members of the public seeking information and services. This access must be comparable to that which is offered to similar individuals who do not have disabilities.

Standards for complying with this law are prescribed by the Architectural and Transportation Barriers Compliance Board ("The Access Board"). The contractor must comply with any future updates of standards by the Access Board.

36 CFR 1194 implements Section 508 of the Rehabilitation Act of 1973, as amended, and is viewable at <http://www.access-board.gov/sec508/508standards.htm>.

(c) Except as indicated elsewhere in the contract, all ICT procured through this contract must meet the applicable accessibility standards at 36 CFR 1194 as follows: 1194.21 Software applications and operating systems

- 1194.22 Web-based intranet and Internet information and applications
- 1194.23 Telecommunications products
- 1194.24 Video and multimedia products
- 1194.25 Self-contained, closed products
- 1194.26 Desktop and portable computers

1194.31 Functional performance criteria

1194.41 Information, documentation, and support

(d) Deliverable(s) must incorporate these standards as well.

(d) The final work product must include documentation that the deliverable conforms with the Section

508 Standards promulgated by the US Access Board.

(e) The Contractor must comply with 508 standards, and any changes needed to conform to the standards will be at no additional charge to USAID.

H.22 EXECUTIVE ORDER ON TERRORISM FINANCING

The Contractor is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Contractor to ensure compliance with these Executive Orders and laws. This provision must be included in all subcontracts/subawards issued under this contract. A list of these names can be found at the web site of the Office of Foreign Assets Control (OFAC) with the Department of Treasury at <http://treasury.gov/ofac>.

H.23 FOREIGN GOVERNMENT DELEGATIONS TO INTERNATIONAL CONFERENCES

Funds in this contract may not be used to finance the travel, per diem, hotel expenses, meals, conference fees or other conference costs for any member of a foreign government's delegation to an international conference sponsored by a public international organization, except as provided in ADS Mandatory Reference "Guidance on Funding Foreign Government Delegations to International Conferences" <http://www.usaid.gov/policy/ads/300/350maa.pdf> or as approved by the CO.

H.24 ENVIRONMENTAL COMPLIANCE

The Contract will be covered by the following approved Request for Categorical Exclusion (RCE, Number: 2021-UKR-018), ATTACHMENT J.6 of the Contract.

1) The Foreign Assistance Act of 1961, as amended, Section 117 requires that the impact of USAID's activities on the environment be considered and that USAID include environmental sustainability as a central consideration in designing and carrying out its development programs. This mandate is codified in Federal Regulations (22 CFR 216) and in USAID's Automated Directives System (ADS) ADS 201 and ADS 204, which, in part, require that the potential environmental impacts of USAID-financed activities are identified prior to a final decision to proceed and that appropriate environmental safeguards are adopted for all activities. Applicant's environmental compliance obligations under these regulations and procedures are specified in the following paragraphs of this Contract.

2) In addition, the Contractor must comply with host country environmental regulations unless otherwise directed in writing by USAID. In case of conflict between host country and USAID regulations, the latter shall govern.

3) No activity funded under this Contract will be implemented unless an environmental threshold determination, as defined by 22 CFR 216, has been reached for that activity, as documented in a Request for Categorical Exclusion (RCE), Initial Environmental Examination (IEE), or Environmental Assessment (EA) duly signed by the Bureau Environmental Officer (BEO). (Hereinafter, such documents are described as "approved Regulation 216 environmental documentation.")

4) The Request for Categorical Exclusion (RCE, Number 2021-UKR-018) has been approved for the Activity funding this Contract and defines environmental compliance terms and conditions for this award. It will cover program activities discussed in the Section C, Statement of Work (SOW), of this Contract during the implementation period. USAID has determined that a Categorical Exclusion applies to all activities discussed in the Section C, SOW, of this Contract.

5) As part of its Initial and Second Six-Month Implementation Plans and all Annual Implementation Plans thereafter, the Contractor, in collaboration with the USAID COR and Mission Environmental Officer or Bureau Environmental Officer, as appropriate, shall review all ongoing and planned activities under this award to determine if they are within the scope of the approved Regulation 216 environmental documentation.

6) If the Contractor plans any new activities outside the scope of the approved Regulation 216 environmental documentation, it shall prepare an amendment to the documentation for USAID review and approval. No such new activities shall be undertaken prior to receiving written USAID approval of environmental documentation amendments.

7) Any ongoing activities found to be outside the scope of the approved Regulation 216 environmental documentation shall be halted until an amendment to the documentation is submitted and written approval is received from USAID.

Offerors need to account for resources required for implementing and monitoring the environmental compliance activities in the Technical Proposal and in the Cost Proposal and describe associated costs in detail to the degree possible in the budget narrative.

H.25 CONSENT TO SUBCONTRACT

(a) Pursuant to FAR § 52.244-2, "Subcontracts," the contracting officer hereby consents to the contractor's award of the below subcontracts as proposed in the contractor's proposal that resulted in the award of this contract to the following firms for the products or services specified below:

(1) Subcontractor Name: **TBD**.
Amount: **TBD**.

(b) The contractor must request contracting officer consent and submit the information required by the aforementioned clause for any subcontracts requiring consent but not listed here. In order for the Contractor to receive consent to subcontract; it must address each of the elements in FAR 44.202-2 for each sub-Contractor. If the Contractor chooses not to request consent to subcontract at the time of proposal submission, it still must identify all sub- Contractors and lower tier sub-Contractors proposed to perform work under the contract.

H.26 NONDISCRIMINATION (JUNE 2012)

FAR Part 22 and the clauses prescribed in that part prohibit contractors performing in or recruiting from the U.S. from engaging in certain discriminatory practices.

USAID is committed to achieving and maintaining a diverse and representative workforce and a workplace free of discrimination. Based on law, Executive Order, and Agency policy, USAID prohibits discrimination in its own workplace on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, disability, age, veteran's status, sexual orientation, genetic information, marital status, parental status, political affiliation, and any other conduct that does not adversely affect the performance of the employee. USAID does not tolerate any type of harassment, either sexual or nonsexual, of any employee or applicant for employment. Contractors are required to comply with the nondiscrimination requirements of the FAR.

In addition, the Agency strongly encourages all its contractors (at all tiers) to develop and enforce comprehensive nondiscrimination policies for their workplaces that include protection on these expanded bases, subject to applicable law

H.27 GRANTS UNDER CONTRACT (GUC)

The Contractor is required to develop and execute a grants program in accordance with the requirements for grants under contracts as provided in ADS 302.3.4.13. The Contractor must apply at a minimum all of the following requirements to the grant program and all grants awarded by the Contractor:

1. The Contractor is authorized to execute grants (not cooperative agreements) with nongovernmental organizations (non-profits or for-profits).
2. In accordance with ADS 303, the total value of an individual grant to a U.S. organization must not exceed \$100,000. (This limitation does not apply to grant awards to non-U.S. organizations.)
3. The Contractor is authorized to provide funds as in-kind assistance only to a particular partner government entity (for example, ministry, municipality, district, etc.). The Program will not provide direct grants to the Partner Government Entities.
4. The Contractor must ensure that USAID is significantly involved in establishing the selection criteria.
5. The selection of all grant recipients is subject to USAID review and approval in writing.
6. The Contractor must follow and apply all Agency requirements which apply to the award and administration of all USAID-executed grants to all grants signed by the Contractor. The range of requirements must include, but is not limited to, all requirements of USAID's Automated Directives System 303, as amended, all applicable regulatory, policy or procedural changes disseminated through Acquisition & Assistance Policy Directives or any similar notice available on the Agency's website.
7. The Contractor must include award language that notifies the grantee that USAID retains the right to terminate the grant activity (activities) unilaterally in extraordinary circumstances.
8. Each grant awarded by the Contractor on behalf of USAID under this contract must be in the following form: (1) a grant letter; (2) a Schedule; (3) a Program Description to be developed by the grantee and the Contractor; and (4) (i) the mandatory standard provisions and (ii) any applicable required-as-applicable standard provisions.
9. The Contractor must ensure that the grantee does not appear on the "List of Parties Excluded from Federal Procurement and Non-Procurement Programs".
10. The Contractor must acquire a signed Certification Regarding Terrorist Financing from the proposed grantee and the Contractor must confirm that the proposed grantee: (i) does not appear on the master list of Specially Designated Nationals and Blocked Persons, which list is maintained by the U.S. Treasury's Office of Foreign Assets Control (OFAC) and is available online at OFAC's website: <http://sdnsearch.ofac.treas.gov/> and (ii) is not included in any supplementary information concerning prohibited individuals or entities that may be provided by USAID to the Contractor and (iii) has not been designated by the United Nations Security (UNSC) sanctions committee established under UNSC Resolution 1267 (1999) (the "1267 Committee") [individuals and entities linked to the Taliban, Osama bin Laden (a.k.a. "Osama bin Laden"), or the Al Qaeda Organization]. To determine whether there has been a published designation of an individual or entity by the 1267 Committee, the Contractor must refer to the consolidated list available online at the Committee's website: <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>. The Contractor must consider all information about the proposed grantee of which it is aware and all public information that is reasonably available to it or of which it should be aware prior to

recommending a grant to that individual or organization for USAID's approval. The Contractor further agrees to implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity and to immediately notify USAID and cease support, transactions or dealings with any individual or organization that is designated by the United States Government as a Foreign Terrorist Organization or as a Specially Designated Terrorist or a Specially Designated Global Terrorist or has been designated by the United States Government in or pursuant to Executive Orders 12947 or 13224, or has been designated by the 1267 Committee, or otherwise engages in terrorist acts.

11. The grant does not extend for any period beyond the estimated termination or completion date of this contract.
12. The Contractor must scrupulously avoid any conflicts of interest and should any conflict of interest arise, the Contractor must immediately notify the Contracting Officer as to the conflict and the Contractor's proposed solution for avoiding the conflict, and the Contractor must follow the instructions of the Contracting Officer.
13. The Contractor will act as custodian for USAID of all records relating to grants under the Contract. The Contractor will preserve all records with respect to its grant-making (including with respect to the deliberations of all Review Panels) and grant administration hereunder. Copies of all reports received from grantees will be promptly forwarded to the Contracting Officer's Representative (COR). USAID and the Comptroller General must have full access to all documents, papers and others records of the Contractor with respect to its duties hereunder. At the conclusion of the contract, the Contractor must consult with the Contracting Officer for direction as to which records must be transferred to USAID.
14. With reference to ADS 303 Required as Applicable Standard Provision entitled "SUBMISSIONS TO THE DEVELOPMENT EXPERIENCE CLEARINGHOUSE AND DATA RIGHTS (JUNE 2012)" the Contractor must forward one copy of all published reports generated by recipients under the grants program to USAID Development Experience Clearinghouse (DEC).
15. The Contractor must comply with and apply additional grant program requirements under this Contract. Conflicts between Section C and this Section must be resolved by the Contracting Officer.
16. USAID/COR must be significantly involved in establishing the selection criteria during each grants under contract completion cycle, and the COR must approve the actual selection of grant recipients. USAID retains the right to terminate any or all grants unilaterally in extraordinary circumstances.

H.28 USAID-FINANCED THIRD-PARTY WEB SITES (NOV 2017)

(a) Definitions:

"Third-party web sites"

Sites hosted on environments external to USAID boundaries and not directly controlled by USAID policies and staff, except through the terms and conditions of a contract. Third-party Web sites include project sites.

(b) The contractor must adhere to the following requirements when developing, launching, and maintaining a third-party Web site funded by USAID for the purpose of meeting the project implementation goals:

(1) Working through the COR, the contractor must notify the USAID Bureau for Legislative and Public Affairs/Public Information, Production and Online Services (LPA/PIPOS) of the Web site URL as far in advance of the site's launch as possible.

(2) The contractor must comply with Agency branding and marking requirements comprised of the USAID logo and brandmark with the tagline "from the American people," located on the USAID Web site at www.usaid.gov/branding, and USAID Graphics Standards manual at <http://www.usaid.gov>.

(3) The Web site must be marked on the index page of the site and every major entry point to the Web site with a disclaimer that states: "The information provided on this Web site is not official U.S. Government information and does not represent the views or positions of the U.S. Agency for International Development or the U.S. Government."

(4) The Web site must provide persons with disabilities access to information that is comparable to the access available to others. As such, all site content must be compliant with the requirements of the Section 508 amendments to the Rehabilitation Act.

(5) The contractor must identify and provide to the COR, in writing, the contact information for the information security point of contact. The contractor is responsible for updating the contact information whenever there is a change in personnel assigned to this role.

(6) The contractor must provide adequate protection from unauthorized access, alteration, disclosure, or misuse of information processed, stored, or transmitted on the Web sites. To minimize security risks and ensure the integrity and availability of information, the contractor must use sound: system/software management; engineering and development; and secure coding practices consistent with USAID standards and information security best practices. Rigorous security safeguards, including but not limited to, virus protection; network intrusion detection and prevention programs; and vulnerability management systems must be implemented and critical security issues must be resolved as quickly as possible or within 30 days. Contact the USAID Chief Information Security Officer (CISO) at ISSO@usaid.gov for specific standards and guidance.

(7) The contractor must conduct periodic vulnerability scans, mitigate all security risks identified during such scans, and report subsequent remediation actions to CISO at ISSO@usaid.gov and COR within 30 workdays from the date vulnerabilities are identified. The report must include disclosure of the tools used to conduct the scans. Alternatively, the contractor may authorize USAID CISO at ISSO@usaid.gov to conduct periodic vulnerability scans via its Web-scanning program. The sole purpose of USAID scanning will be to minimize security risks. The contractor will be responsible for taking the necessary remediation action and reporting to USAID as specified above.

(c) For general information, agency graphics, metadata, privacy policy, and 508 compliance requirements, refer to <http://www.usaid.gov>.

H.29 AIDAR 752.231-72 CONFERENCE PLANNING AND REQUIRED APPROVALS (AUG 2013) [DEVIATION (APR 2020)]

(a) Definitions. As used in this section —

Conference means a seminar, meeting, retreat, symposium, workshop, training activity or other such event that is funded in whole or in part by USAID.

Multilateral organization means an organization or alliance formed between multiple nations and/or organizations to work on issues that relate to all members of the organization or alliance (e.g., World Health Organization, The World Bank, The Vaccine Alliance (Gavi), Education Cannot Wait).

High-profile policy meeting means an event sponsored by a multilateral organization, which includes meetings to discuss issues of global interest, such as the United Nations General Assembly or the Spring and Fall meetings of the World Bank and International Monetary Fund.

Net conference expense means the total conference expenses excluding: any fees or revenue received by the Agency through the conference; costs to ensure the safety of attending governmental officials; and salary of USAID employees and USAID Personal Services Contractors.

Temporary duty (TDY) travel means official travel at least 50 miles from both the traveler's home and duty station for a period exceeding 12 hours.

USAID employee means a U.S. direct-hire employee, a Foreign Service National direct-hire employee, or a Federal employee detailed to USAID from another U.S. Government agency.

Personal Services Contractor (PSC) means U.S. National (US), a Cooperating Country National (CCN) and a Third Country National (TCN), who is awarded a personal services contract in accordance with AIDAR Appendices D or J.

(b) Unless an exception in paragraph (c) of the clause at 752.231-72 applies, the contractor must obtain prior written approval from the contracting officer, or the contracting officer's representative (COR), if delegated in the Contracting Officer's Representative Designation Letter, at least 30 days prior to committing costs, for the following:

- (1) A conference funded in whole, or in part, by USAID when ten (10) or more USAID employees or Personal Services Contractors are required to travel on temporary duty status to attend the conference;
- (2) A conference funded in whole, or in part, by USAID and attended by USAID employees or USAID Personal Services Contractors, when the net conference expense funded by USAID is expected to exceed \$100,000, irrespective of the number of USAID participants;
- (3) Participation of contractor personnel in a high-level policy conference sponsored by a multilateral organization when the individual attends the conference on behalf of USAID, or as part of USAID's delegation; or
- (4) Participation of contractor personnel in an operational or technical meeting, or a periodic event, with representatives of multilateral organizations to discuss USAID-funded programs and activities, when:
 - (i) The individual attends the event on behalf of USAID or as part of USAID's team; and
 - (ii) Temporary duty travel is necessary.

(c) Exceptions. Prior USAID approval is not required for the following:

- (1) Co-creation conferences to facilitate the design of programs or procurements.
- (2) Events funded and scheduled by the Center for Professional Development within the USAID Office of Human Capital and Talent Management.
- (3) A single course presented by an instructor conducted at a U.S. Government training facility (including the Washington Learning Center or other USAID training facilities), a commercial training facility, or other venue if a U.S. Government training facility is not available.
- (4) Conferences conducted at a U.S. Government facility or other venue not paid directly or indirectly by USAID, when travel of USAID employees or USAID Personal Services Contractors, light refreshments and if applicable, costs associated with participation of the contractor's staff are the only direct costs associated with the event. The exception does not apply to the requirements in paragraph (b)(3) and (4) related to meetings with multilateral organizations.

(d) Costs associated with a conference that meets the criteria above, incurred without USAID prior written approval, are unallowable.

(e) Conferences approved at the time of award will be incorporated into the contract. The contractor must submit subsequent requests for approval of conferences on a case-by-case basis, or requests for multiple conferences may be submitted at one time.

(f) Documentation.

(1) Requests for approval of a conference that meets the criteria in paragraphs (b)(1) and (b)(2) of this section must include:

(i) A brief summary of the proposed event;

(ii) A justification for the conference and alternatives considered, e.g., teleconferencing and videoconferencing;

(iii) The estimated budget by line item (e.g., travel and per diem, venue, facilitators, meals, equipment, printing, access fees, ground transportation);

(iv) A list of USAID employees or PSCs attending and a justification for each; and the number of other USAID-funded participants (e.g., contractor personnel);

(v) The venues considered (including government-owned facility), cost comparison, and justification for venue selected if it is not the lowest cost option;

(vi) If meals will be provided to local USAID employees or PSCs (a local employee would not be in travel status), a determination that the meals are a necessary expense for achieving Agency objectives; and

(vii) A certification that strict fiscal responsibility has been exercised in making decisions regarding conference expenditures, the proposed costs are comprehensive and represent the greatest cost advantage to the U.S. Government, and that the proposed conference representation has been limited to the minimum number of attendees necessary to support the Agency's mission.

(2) Requests for approval to attend a multilateral conference and operational or technical meeting that meet the requirements in paragraphs (b)(3) and (4) of this section must include:

- (1) A description of the event and how the participant(s) will forward the Agency and U.S. Government's policy goals;
- (2) The role the participant(s) will have; and
- (3) The estimated cost to USAID.

H.30 USAID IMPLEMENTING PARTNER NOTICES (IPN) PORTAL FOR ACQUISITION (JULY 2014)

a) Definitions

"USAID Implementing Partner Notices (IPN) Portal for Acquisition ("IPN Portal")" means the single point where USAID posts universal bilateral modifications, which can be accessed electronically by registered USAID contractors. The IPN Portal is located at <https://sites.google.com/site/ipnforacquisitions/>.

"IPN Portal Administrator" means the USAID official designated by the M/OAA Director, who has overall responsibility for managing the USAID Implementing Partner Notices Portal for Acquisition.

"Universal bilateral modification" means modifications such as those that update or incorporate new FAR or AIDAR clauses, other terms and conditions, or special requirements that affect all awards or a class of awards as specified in the Agency notification of such terms and conditions or special requirements.

b) By submission of an offer and execution of a contract, the Offeror/Contractor acknowledges the requirement to:

- (1) Register with the IPN Portal if awarded a contract resulting from this solicitation, and
 - (2) Receive universal bilateral modifications to this contract and general notices via the IPN Portal.
- c)** Procedure to register for notifications.

Go to: <https://sites.google.com/site/usaidipnforacquisitions/> and click the “Register” button at the top of the page. Contractor representatives must use their official organization email address when subscribing, not personal email addresses.

d) Processing of IPN Portal Modifications

The contractor may access the IPN Portal at any time to review all IPN Portal modifications; however, the system will also notify the contractor by email when the USAID IPN Portal Administrator posts a universal bilateral modification for contractor review and signature. Proposed IPN Portal modifications distributed via the IPN Portal are applicable to all awards, unless otherwise noted in the proposed modification.

Within 15 calendar days from receipt of the notification email from the IPN Portal, the contractor must do one of the following:

- (1) (a) verify applicability of the proposed modification for their award(s) per the instructions provided with each modification; (b) download the modification and incorporate the following information on the SF30 form: contract number, organization name, and organization mailing address as it appears in the basic award; (c) sign the hardcopy version; and (d) send the signed modification (by email or hardcopy) to the CO for signature. The contractor must not incorporate any other changes to the IPN Portal modification. Bilateral modifications provided through the IPN Portal are not effective until the both the contractor and the CO sign the modification;
- (2) Notify the Contracting Officer in writing if the modification requires negotiation of additional changes to terms and conditions of the contract; or
- (3) Notify the Contracting Officer that the contractor declines to sign the modification.

Within 30 calendar days of receipt of a signed modification from the contractor, the CO must provide the fully executed modification to the contractor or initiate discussions with the contractor.

H.31 SUBMISSION OF DATASETS TO THE DEVELOPMENT DATA LIBRARY (DDL) (OCTOBER 2014)

(a) Definitions. For the purpose of submissions to the DDL:

(1) “Dataset” is an organized collection of structured data, including data contained in spreadsheets, whether presented in tabular or non-tabular form. For example, a Dataset may represent a single spreadsheet, an extensible mark-up language (XML) file, a geospatial data file, or an organized collection of these. This requirement does not apply to aggregated performance reporting data that the contractor submits directly to a USAID portfolio management system or to unstructured data, such as email messages, PDF files, PowerPoint presentations, word processing documents, photos and graphic images, audio files, collaboration software, and instant messages. Neither does the requirement apply to the contractor’s information that is incidental to award administration, such as financial, administrative, cost or pricing, or management information. Datasets submitted to the DDL will generally be those generated with USAID resources and created in support of Intellectual Work that is uploaded to the Development

Experience Clearinghouse (DEC) (see AIDAR 752.7005 “Submission Requirements for Development Experience Documents”).

(2) “Intellectual Work” includes all works that document the implementation, monitoring, evaluation, and results of international development assistance activities developed or acquired under this award, which may include program and communications materials, evaluations and assessments, information products, research and technical reports, progress and performance reports required under this award (excluding administrative financial information), and other reports, articles and papers prepared by the contractor under the award, whether published or not. The term does not include the contractor’s information that is incidental to award administration, such as financial, administrative, cost or pricing, or management information.

(b) Submissions to the Development Data Library (DDL)

(1) The Contractor must submit to the Development Data Library (DDL), at www.usaid.gov/data, in a machine-readable, non-proprietary format, a copy of any Dataset created or obtained in performance of this award, including Datasets produced by a subcontractor at any tier. The submission must include supporting documentation describing the Dataset, such as code books, data dictionaries, data gathering tools, notes on data quality, and explanations of redactions.

(2) Unless otherwise directed by the Contracting Officer (CO) or the Contracting Officer Representative (COR), the contractor must submit the Dataset and supporting documentation within thirty (30) calendar days after the Dataset is first used to produce an Intellectual Work or is of sufficient quality to produce an Intellectual Work. Within thirty (30) calendar days after award completion, the contractor must submit to the DDL any Datasets and supporting documentation that have not previously been submitted to the DDL, along with an index of all Datasets and Intellectual Work created or obtained under the award. The contractor must also provide to the COR an itemized list of any and all DDL submissions. The contractor is not required to submit the data to the DDL, when, in accordance with the terms and conditions of this award, Datasets containing results of federally funded scientific research are submitted to a publicly accessible research database. However, the contractor must submit a notice to the DDL by following the instructions at www.usaid.gov/data, with a copy to the COR, providing details on where and how to access the data. The direct results of federally funded scientific research must be reported no later than when the data are ready to be submitted to a peer-reviewed journal for publication, or no later than five calendar days prior to the conclusion of the award, whichever occurs earlier.

(3) The contractor must submit the Datasets following the submission instructions and acceptable formats found at www.usaid.gov/data.

(4) The contractor must ensure that any Dataset submitted to the DDL does not contain any proprietary or personally identifiable information, such as social security numbers, home addresses, and dates of birth. Such information must be removed prior to submission.

(5) The contractor must not submit classified data to the DDL.

H.32 PROHIBITION ON THE USE OF FEDERAL FUNDS TO PROMOTE, SUPPORT, OR ADVOCATE THE LEGALIZATION OR PRACTICE OF PROSTITUTION– TIP ACQUISITION (MAY 2007)

(a) The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this contract may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the immediately preceding sentence shall be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims

while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked.

(b) The Contractor shall insert this clause, in its entirety, in all sub-awards under this award.

(c) This provision includes express terms and conditions of the contract and any violation of it shall be grounds for unilateral termination of the contract, in whole or in part, by USAID prior to the end of the term.

H.33 USAID IMPLEMENTATION OF SECTION 508 OF THE REHABILITATION ACT OF 1973 AND FEDERAL ACQUISITION CIRCULAR (FAC) 97-27 "ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY

In accordance with ADS 302, Contractor shall comply with USAID Implementation of Section 508 of the Rehabilitation Act of 1973 and Federal Acquisition Circular (FAC) 97-27 "Electronic and Information Technology Accessibility. Further information on Section 508 is available via the Internet at: <http://www.section508.gov> and <http://www.usaid.gov/policy/ads/300/302.pdf>

H.34 CONTRACTOR'S PERSONNEL INTEGRITY IN FOREIGN ASSISTANCE

In accordance with FAR 52.203-13, the Contractor shall exercise due diligence on personnel to be engaged under this contract to ensure that proposed candidates were not directly involved in or associated with any dubious activities, including the recent U.S. financial scandals, and that their employment histories and past conduct display integrity congruent with the program goals.

H.35 THIRD COUNTRY TRAINING

Third-country training must **not** take place in countries that are

- Considered unfriendly by the U.S. Department of State and to which travel by U.S. citizens is prohibited; or
- Identified as terrorist countries by the Department of State.

H.36 ELECTRONIC PAYMENTS SYSTEM

1. Definitions:

a. "Cash Payment System" means a payment system that generates any transfer of funds through a transaction originated by cash, check, or similar paper instrument. This includes electronic payments to a financial institution or clearing house that subsequently issues cash, check, or similar paper instrument to the designated payee.

b. "Electronic Payment System" means a payment system that generates any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, which is initiated through an electronic terminal, telephone, mobile phone, computer, or magnetic tape, for the purpose of ordering, instructing or authorizing a financial institution to debit or credit an account. The term includes debit cards, wire transfers, transfers made at automatic teller machines, and point-of-sale terminals.

2. The contractor agrees to use an electronic payment system for any payments under this award to beneficiaries, subcontractors, or grants under contracts, where applicable.

3. Exceptions. The contractor is allowed the following exceptions, provided the contractor documents its contract file with the appropriate justification:

a. Cash payments made while establishing electronic payment systems, provided that this

exception is not used for more than six months from the effective date of this award.

b. Cash payments made to payees where the contractor does not expect to make payments to the same payee on a regular, recurring basis, and payment through an electronic payment system is not reasonably available.

c. Cash payments to vendors below the micro purchase level as defined by FAR 2.101, or for Grants Under Contracts for less than \$3000, when payment through an electronic payment system is not reasonably available.

d. The contractor has received a specific written exception from the Contracting Officer that a specific payment or all cash payments are authorized, based on the contractor's written justification, which provides a basis and cost analysis for the requested exception.

4. More information about how to establish, implement, and manage electronic payment methods is available to contractors at <http://solutionscenter.nethope.org/programs/c2e-toolkit>."

H.37 HANDLING OF DATA

(a) In the performance of this contract, it is anticipated that the Contractor may have access to, be furnished with or use the following categories of data (which may be technical data, computer software, administrative, management information, or financial, including cost or pricing):

- i. Data of third parties which the Government has agreed to handle under protective arrangements; and
- ii. Government data, the use and dissemination of which, the Government intends to control.

(b) In order to protect the interests of the Government and the owners, licensors and licensees of such data, the Contractor agrees, with respect to any such third party or Government data that is either marked with a restrictive legends, specifically identified in this contract, or otherwise identified in writing by the Contracting Officer as being subject to this clause, to:

- i. Use, disclose, and reproduce such data only to the extent necessary to perform the work required under this contract;
- ii. Allow access to such data only to those of its employees that require access for their performance under this contract;
- iii. Preclude access and disclosure of such data outside the Contractor's organization; and
- iv. Return or dispose of such data, as the Contracting Officer may direct, when the data is no longer needed for contract performance.

(c) The Contractor agrees to inform and instruct its employees of its and their obligations under this clause and to appropriately bind its employees contractually to comply with the access, use, disclosure, and reproduction provisions of this clause.

(d) In the event that data includes a legend that the Contractor deems to be ambiguous or unauthorized, the Contractor may inform the Contracting Officer of such condition. Notwithstanding such a legend, as long as such legend provides an indication that a restriction on use or disclosure was intended, the Contractor shall treat such data pursuant to the requirements of this clause unless otherwise directed, in writing, by the Contracting Officer.

(e) Notwithstanding the above, the Contractor shall not be restricted in use, disclosure, and reproduction of any data that:

- i. Is or becomes, generally available or public knowledge without breach of this clause by the Contractor;
- ii. Is known to, in the possession of, or is developed by the Contractor independently of any disclosure of, or without reference to, proprietary, restricted, confidential, or otherwise protectable data under this clause;
- iii. Is rightfully received by the Contractor from a third party without restriction;
- iv. Or is required to be produced by the Contractor pursuant to a court order or other Government action.

If the Contractor believes that any of these events or conditions that remove restrictions on the use, disclosure, and reproduction of the data apply, the Contractor shall promptly notify the Contracting Officer of such belief prior to acting on such belief, and, in any event, shall give notice to the Contracting Officer prior to any unrestricted use, disclosure, or reproduction of such data.

H.38 DISCLOSURE OF INFORMATION

- (a) Any information made available to the Contractor by the Government must be used only for the purpose of carrying out the provisions of this contract and must not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract.
- (b) In performance of this contract, the Contractor assumes responsibility for protection of the confidentiality of Government records and must ensure that all work performed by its Subcontractors shall be under the supervision of the Contractor or the Contractor's responsible employees.
- (c) Each officer or employee of the Contractor or any of its Subcontractors to whom any Government record may be made available or disclosed must be notified in writing by the Contractor that information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such information, by any means, for a purpose or to an extent unauthorized herein, may subject the offender to criminal sanctions imposed by 19 U.S.C. §641. That section provides, in pertinent part, that whoever knowingly converts to their use or the use of another, or without authority, sells, conveys, or disposes of any record of the United States or whoever receives the same with intent to convert it to their use or gain, knowing it to have been converted, shall be guilty of a crime punishable by a fine of up to \$10,000, or imprisoned up to ten years, or both.

H.39 FACILITIES USED FOR RELIGIOUS ACTIVITIES

Unless otherwise authorized in writing by the Contracting Officer, Contractor shall not use Contract funds for any work related to facilities of any type where the intended use of such a facility is for inherently religious activities. In cases where work addressed by this provision is authorized by the Contracting Officer, such authorization will be limited and explicit.

H.40 NONEXPENDABLE PROPERTY PURCHASES

- 1) The Contractor is hereby authorized to purchase the equipment and/or resources as identified in the approved budget. All purchases shall be in accordance with the terms and conditions outlined in AIDAR 752.245-70 and FAR 52.245.
- 2) The Contractor shall request CO approval for purchase of nonexpendable property (NXP) as defined that is not identified in the approved budget. Any Contractor request to purchase additional non-expendable property after award should include an explanation and appropriate justification.

- 3) The Contractor may also be required to obtain CO approval for other types of purchases as required by other U.S. Government regulations and policies (i.e. Restricted Goods, etc.) outlined in the contract.
- 4) "Title To and Care of Property" for government furnished property is in accordance with AIDAR 752.245-71).

H.41 AIDAR 752.7004 EMERGENCY LOCATOR INFORMATION (JUL 1997)

The Contractor agrees to provide the following information to the Mission Administrative Officer on or before the arrival in the host country of every contract employee or dependent:

- (1) The individual's full name, home address, and telephone number.
- (2) The name and number of the contract, and whether the individual is an employee or dependent.
- (3) The contractor's name, home office address, and telephone number, including any after-hours emergency number(s), and the name of the contractor's home office staff member having administrative responsibility for the contract.
- (4) The name, address, and telephone number(s) of each individual's next of kin.
- (5) Any special instructions pertaining to emergency situations such as power of attorney designees or alternate contact persons.

H.42 AIDAR 752.228-70 MEDICAL EVACUATION (MEDEVAC) SERVICES (JUL 2007)

(a) Contractor must provide MEDEVAC service coverage to all U.S. citizen, U.S. resident alien, and Third Country National employees and their authorized dependents (hereinafter "individual") while overseas under a USAID-financed direct contract. USAID will reimburse reasonable, allowable, and allocable costs for MEDEVAC service coverage incurred under the contract. The Contracting Officer will determine the reasonableness, allowability, and allocability of the costs based on the applicable cost principles and in accordance with cost accounting standards.

(b) Exceptions.

- (i) The Contractor is not required to provide MEDEVAC insurance to eligible employees and their dependents with a health program that includes sufficient MEDEVAC coverage as approved by the Contracting Officer.
- (ii) The Mission Director may make a written determination to waive the requirement for such coverage. The determination must be based on findings that the quality of local medical services or other circumstances obviate the need for such coverage for eligible employees and their dependents located at post.

(c) Contractor must insert a clause similar to this clause in all subcontracts that require performance by contractor employees overseas.

H.43 CLOUD COMPUTING (APRIL 2018)

(a) *Definitions.* As used in this special contract requirement-

"Cloud computing" means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software-as-a-service, infrastructure-as-a-service, and platform-as-a-service.

"Federal information" means information created, collected, processed, disseminated, or disposed of by or for the Federal Government, in any medium or form. (OMB A-130)

“Information” means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

“Information Security Incident” means an occurrence that (1) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or (2) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies.

“Privacy Incident means a violation or imminent threat of violation of security policies, acceptable use policies, or standard security practices, involving the breach of Personally Identifiable Information (PII), whether in electronic or paper format.

“Spillage” means a security incident that results in the transfer of classified or other sensitive or sensitive but unclassified information to an information system that is not accredited, (i.e., authorized) for the applicable security level of the data or information. “Cloud Service Provider” or CSP means a company or organization that offers some component of cloud computing – typically Infrastructure as a Service (IaaS), Software as a Service (SaaS) or Platform as a Service (PaaS) – to other businesses, organizations or individuals.

“Penetration Testing” means security testing in which assessors mimic real-world attacks to identify methods for circumventing the security features of an application, system, or network. (NIST SP 800-115)

“Third Party Assessment Organizations” means an organization independent of the organization whose IT system is being assessed. They are required to meet the ISO/IEC 17020:1998 standards for independence and managerial competence and meet program requirements for technical FISMA competence through demonstrated expertise in assessing cloud-based solutions.

“Personally Identifiable Information (PII)” means information that can be used to distinguish or trace an individual's identity, such as their name, Social Security Number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. In performing this assessment, it is important to recognize that non-PII can become PII whenever additional information is made publicly available — in any medium and from any source — that, when combined with other available information, could be used to identify an individual. PII examples include name, address, SSN, or other identifying number or code, telephone number, and e-mail address. PII can also consist of a combination of indirect data elements such as gender, race, birth date, geographic indicator (e.g., zip code), and other descriptors used to identify specific individuals. When defining PII for USAID purposes, the term “individual” refers to a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) Applicability

This special contract requirement applies to the Contractor and all personnel providing support under this contract (hereafter referred to collectively as “Contractor”) and addresses specific USAID requirements in addition to those included in the Federal Acquisition Regulation (FAR), Privacy Act of 1974 (5 U.S.C. 552a - the Act), E-Government Act of 2002 - Section 208 and Title III, Federal Information Security Management Act (FISMA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Pub. L. 104-191, 110 Stat. 1936), the Sarbanes-Oxley Act of 2002 (SOX, Pub. L. 107-204, 116 Stat 745), National Institute of Standards and Technology (NIST), Federal Information Processing Standards (FIPS) and the 800-Series Special Publications (SP), Office of Management and Budget (OMB) memorandums, and other laws, mandates, or executive orders

pertaining to the development and operations of information systems and the protection of sensitive information and data.

(c) Limitations on access to, use and disclosure of, Federal information.

(1) The Contractor shall not access, use, or disclose Government data unless specifically authorized by the terms of this contract issued hereunder.

(i) If authorized by the terms of this contract issued hereunder, any access to, or use or disclosure of, Federal information shall only be for purposes specified in this contract.

(ii) The Contractor shall ensure that its employees are subject to all such access, use, and disclosure prohibitions and obligations.

(iii) These access, use, and disclosure prohibitions and obligations shall remain effective beyond the expiration or termination of this contract.

(2) The Contractor shall use related Federal information only to manage the operational environment that supports the Federal information and for no other purpose unless otherwise permitted with the prior written approval of the Contracting Officer.

(d) Records Management and Access to Information

(1) The Contractor shall support a system in accordance with the requirement for Federal agencies to manage their electronic records in accordance with capabilities such as those identified in the provisions of this contract and National Archives and Records Administration (NARA) retention policies.

(2) Upon request by the government, the Contractor shall deliver to the Contracting Officer all Federal information, including data schemas, metadata, and other associated data artifacts, in the format specified in the schedule or by the Contracting Officer in support of government compliance requirements to include but not limited to Freedom of Information Act, Privacy Act, e-Discovery, e-Records and legal or security investigations.

(3) The Contractor shall retain and maintain all Federal information in accordance with records retention provisions negotiated by the terms of the contract and in accordance with USAID records retention policies.

(4) The Contractor shall dispose of Federal information in accordance with the terms of the contract and provide the confirmation of disposition to the Contracting Officer in accordance with contract closeout procedures.

(e) Notification of third party access to Federal information: The Contractor shall notify the Government immediately of any requests from a third party for access to Federal information or, including any warrants, seizures, or subpoenas it receives, including those from another Federal, State, or Local agency, that could result in the disclosure of any Federal information to a third party. The Contractor shall cooperate with the Government to take all measures to protect Federal information from any loss or unauthorized disclosure that might reasonably result from the execution of any such request, warrant, seizure, subpoena, or similar legal process.

(f) Spillage and Information Security Incidents: Upon written notification by the Government of a spillage or information security incident involving classified information, or the Contractor's discovery of a spillage or security incident involving classified information, the Contractor shall immediately (within 30 minutes) notify CIO-HELPDESK@usaid.gov and the Office of Security at SECinformationsecurity@usaid.gov to correct the spillage or information security incident in compliance with agency-specific instructions. The Contractor will also notify the Contracting Officer

or Contracting Officer's Representative and the Contractor Facilities Security Officer. The Contractor will abide by USAID instructions on correcting such a spill or information security incident. For all spills and information security incidents involving unclassified and/or SBU information, the protocols outlined above in section (g) and (h) below shall apply.

(g) Information Security Incidents

(1) Security Incident Reporting Requirements: All Information Security Incidents involving USAID data or systems must be reported in accordance with the requirements below, even if it is believed that the information security incident may be limited, small, or insignificant. USAID will determine the magnitude and resulting actions.

(i) Contractor employees must report via e-mail all Information Security Incidents to the USAID Service Desk immediately, but not later than 30 minutes, after becoming aware of the Incident, at: CIOHELPDESK@usaid.gov, regardless of day or time, as well as the Contracting Officer and Contracting Officer's representative and the Contractor Facilities Security Officer.

Contractor employees are strictly prohibited from including any Sensitive Information in the subject or body of any e-mail concerning information security incident reports. To transmit Sensitive Information, Contractor employees must use FIPS 140-2 compliant encryption methods to protect Sensitive Information in attachments to email. Passwords must not be communicated in the same email as the attachment.

(ii) The Contractor must provide any supplementary information or reports related to a previously reported information security incident directly to CIO-HELPDESK@usaid.gov, upon request. Correspondence must include related ticket number(s) as provided by the USAID Service Desk with the subject line "Action Required: Potential Security Incident".

(h) Privacy Incidents Reporting Requirements: Privacy Incidents may result in the unauthorized use, disclosure, or loss of personally identifiable information, and can result in the loss of the public's trust and confidence in the Agency's ability to safeguard personally identifiable information. PII breaches may impact individuals whose PII is compromised, including potential identity theft resulting in financial loss and/or personal hardship experienced by the individual. Contractor employees must report by e-mail all Privacy Incidents to the USAID Service Desk immediately (within 30 minutes), after becoming aware of the Incident, at: CIO-HELPDESK@usaid.gov, regardless of day or time, as well as the USAID Contracting Officer or Contracting Officer's representative and the Contractor Facilities Security Officer. If known, the report must include information on the format of the PII (oral, paper, or electronic.) The subject line shall read "Action Required: Potential Privacy Incident".

(i) Information Ownership and Rights: USAID information stored in a cloud environment remains the property of USAID, not the Contractor or cloud service provider (CSP). USAID retains ownership of the information and any media type that stores Federal information. The CSP shall only use the Federal information for purposes explicitly stated in the contract. Further, the cloud service provider shall export Federal information in a machine-readable and non-proprietary format that USAID requests at the time of production, unless the parties agree otherwise.

(j) Security Requirements:

(1) The Contractor shall adopt and maintain administrative, technical, operational, and physical safeguards and controls that meet or exceed requirements contained within the Federal Risk and Authorization Management Program (FedRAMP) Cloud Computing Security Requirements Baseline, current standard for NIST 800-53 (Security and Privacy Controls for Federal Information Systems) and Organizations, including Appendix J, and FedRAMP Continuous Monitoring Requirements for the security level and services being provided, in accordance with the security categorization or impact level as defined by the government based on the Federal Information Processing Standard (FIPS) Publication 199 (FIPS-199).

(2) The Contractor shall comply with FedRAMP requirements as mandated by Federal laws and policies, including making available any documentation, physical access, and logical access needed to support this requirement. The Level of Effort for the security assessment and authorization (SA&A) is based on the system's complexity and security categorization. The Contractor shall create, maintain and update the following documentation using FedRAMP requirements and templates, which are available at <https://www.FedRAMP.gov>.

(3) The Contractor must support SA&A activities to include assessment by an accredited Third Party Assessment Organization (3PAO) initially and whenever there is a significant change to the system's security posture in accordance with the FedRAMP Continuous Monitoring Plan. The Contractor must make available to the Contracting Officer, the most current, and any other, Security Assessment Reports for consideration as part of the Contractor's overall Systems Security Plan.

(4) The Government reserves the right to perform penetration testing or request Penetration Testing by an independent source. If the Government exercises this right, the Contractor shall allow Government employees (or designated third parties) to conduct Security Assessment activities to include control reviews in accordance with FedRAMP requirements. Review activities include but are not limited to scanning operating systems, web applications, databases, wireless scanning; network device scanning to include routers, switches, and firewall, and IDS/IPS; databases and other applicable systems, including general support structure, that support the processing, transportation, storage, or security of Federal information for vulnerabilities.

(5) Identified gaps between required FedRAMP Security Control Baselines and Continuous Monitoring controls and the Contractor's implementation as documented in the Security Assessment Report must be tracked by the Contractor for mitigation in a Plan of Action and Milestones (POA&M) document.

Depending on the severity of the gaps, the Government may require them to be remediated before any restricted authorization is issued.

(6) The Contractor is responsible for mitigating all security risks found during SA&A and continuous monitoring activities. All high-risk vulnerabilities must be mitigated within thirty (30) calendar days and all moderate risk vulnerabilities must be mitigated within sixty (60) calendar days from the date vulnerabilities are formally identified. USAID may revoke an ATO for any system if it is determined that the system does not comply with USAID standards or presents an unacceptable risk to the Agency. The Government will determine the risk rating of vulnerabilities.

(7) The Contractor shall provide access to the Federal Government, or their designee acting as their agent, when requested, in order to verify compliance with the requirements and to allow for appropriate risk decisions for an Information Technology security program. The Government reserves the right to conduct onsite inspections. The Contractor must make appropriate personnel available for interviews and provide all necessary documentation during this review and as necessary for continuous monitoring activities.

(k) Privacy Requirements: Cloud Service Provider (CSP) must understand and adhere to applicable federal Privacy laws, standards, and guidance to protect Personally Identifiable Information (PII) about individuals that will be collected and maintained by the Contractor solution. The Contractor responsibilities include full cooperation for any request for disclosure, subpoena, or other judicial process seeking access to records subject to the Privacy Act of 1974.

(l) Data Location: The Contractor must disclose the data server locations where the Agency data will be stored as well as the redundant server locations. The Contractor must have prior Agency approval to store Agency data in locations outside of the United States.

(m) Terms of Service (ToS): The Contractor must disclose any requirements for terms of service agreements and clearly define such terms prior to contract award. All ToS provisions regarding controlling law, jurisdiction, and indemnification must align with Federal statutes, policies, and regulations.

(n) Service Level Agreements (SLAs): The Contractor must be willing to negotiate service levels with USAID; clearly define how performance is guaranteed (such as response time resolution/mitigation time, availability, etc.); monitor their service levels; provide timely notification of a failure to meet the SLAs; and evidence that problems have been resolved or mitigated. Additionally, at USAID's request, the Contractor must submit reports or provide a dashboard where USAID can continuously verify that service levels are being met. Where SLAs fail to be met, USAID may assess monetary penalties or service credit.

(o) Trusted Internet Connection (TIC): The Contractor must route all USAID traffic through the TIC.

(p) Forensics, Freedom of Information Act (FOIA), Electronic Discovery, or additional Information Requests: The Contractor must allow USAID access required to retrieve information necessary for FOIA and Electronic Discovery activities, as well as, forensic investigations for both criminal and noncriminal purposes without their interference in these activities. USAID may negotiate roles and responsibilities for conducting these activities in agreements outside of this contract.

(1) The Contractor must ensure appropriate forensic tools can reach all devices based on an approved timetable.

(2) The Contractor must not install forensic software or tools without the permission of USAID.

(3) The Contractor, in coordination with USAID Bureau for Management, Office of The Chief Information Officer (M/CIO)/ Information Assurance Division (IA), must document and preserve data required for these activities in accordance with the terms and conditions of the contract.

(4) The Contractor, in coordination with USAID M/CIO/IA, must clearly define capabilities, procedures, roles and responsibilities and tools and methodologies for these activities.

(q) The Contractor shall include the substance of this special contract requirement, including this paragraph (p), in all subcontracts, including subcontracts for commercial items.

H.44 AUTHORIZED WORK DAY/WEEK

- (a) Overseas Employees - The work week for the Contractor's overseas employees must not be less than 40 hours and must be scheduled to coincide with the work week for those employees of the USAID Mission and the Cooperating Country associated with the work of this contract.
- (b) A six-day work week may be authorized for short term personnel while in Ukraine with no premium pay if approved by the COR.

H.45 AIDAR 752.204-72 CONTRACTOR ACCESS TO USAID FACILITIES AND USAID'S INFORMATION SYSTEMS (APRIL 2018) (DEVIATION NO. M/OAA-DEV-AIDAR-20-2c) (APRIL 2020)

- (a) HSPD-12 and Personal Identity Verification (PIV). Individuals engaged in the performance of this award as employees, consultants, or volunteers of the contractor must comply with all applicable Homeland Security Presidential Directive-12 (HSPD-12) and Personal Identity Verification (PIV) procedures, as described below, and any subsequent USAID or Governmentwide HSPD-12 and PIV procedures/policies.

(b) A U.S. citizen or resident alien engaged in the performance of this award as an employee, consultant, or volunteer of a U.S. firm may obtain access to USAID facilities or logical access to USAID's information systems only when and to the extent necessary to carry out this award and in accordance with this clause. The contractor's employees, consultants, or volunteers who are not U.S. citizens or resident aliens as well as employees, consultants, or volunteers of non-U.S. firms, irrespective of their citizenship, will not be granted logical access to U.S. Government information technology systems (such as Phoenix, GLAAS, etc.) and must be escorted to use U.S. Government facilities (such as office space).

(c) (1) No later than five business days after award, the Contractor must provide to the Contracting Officer's Representative (COR) a complete list of employees that require access to USAID facilities or information systems.

(2) Before a contractor (or a contractor employee, consultant, or volunteer) or subcontractor at any tier may obtain a USAID ID (new or replacement) authorizing the individual routine access to USAID facilities in the United States, or logical access to USAID's information systems, the individual must provide two forms of identity source documents in original form to the Enrollment Office personnel when undergoing processing. One identity source document must be a valid Federal or State Government-issued picture ID. Contractors may contact the USAID Security Office to obtain the list of acceptable forms of documentation. Submission of these documents, to include documentation of security background investigations, is mandatory in order for the Contractor to receive a PIV/Facilities Access Card (FAC) card and be granted access to any of USAID's information systems. All such individuals must physically present these two source documents for identity proofing at their enrollment.

(d) The Contractor must send a staffing report to the COR by the fifth day of each month. The report must contain the listing of all staff members with access that separated or were hired under this contract in the past sixty (60) calendar days. This report must be submitted even if no separations or hiring occurred during the reporting period. Failure to submit the 'Contractor Staffing Change Report' each month may, at USAID's discretion, result in the suspension of all logical access to USAID information systems and/or facilities access associated with this contract. USAID will establish the format for this report.

(e) Contractor employees are strictly prohibited from sharing logical access to USAID information systems and Sensitive Information. USAID will disable accounts and revoke logical access to USAID IT systems if Contractor employees share accounts.

(f) USAID, at its discretion, may suspend or terminate the access to any systems and/or facilities when a potential Information Security Incident or other electronic access violation, use, or misuse incident gives cause for such action. The suspension or termination may last until such time as USAID determines that the situation has been corrected or no longer exists.

(g) The Contractor must notify the COR and the USAID Service Desk at least five business days prior to the Contractor employee's removal from the contract. For unplanned terminations of Contractor employees, the Contractor must immediately notify the COR and the USAID Service Desk (CIO-HELPDESK@usaid.gov or (202) 712-1234). The Contractor or its Facilities Security Officer must return USAID PIV/FAC cards and remote authentication tokens issued to Contractor employees to the COR prior to departure of the employee or upon completion or termination of the contract, whichever occurs first.

(h) The contractor is required to insert this clause including this paragraph (h) in any subcontracts that require the subcontractor, subcontractor employee, or consultant to have routine physical access to USAID space or logical access to USAID's information systems.

H.46 SPECIAL PROVISIONS: COMMUNICATION

1. *In addition to the requirements of AIDAR 752.7035 "Public Notices,"* the Contractor will obtain prior COR and USAID Development Outreach and Communication Specialist authorization for all public notices, press releases, interviews and other media contacts.
2. *Participant training* conducted in countries other than the U.S. or the cooperating country must comply with the requirements for third country training set forth in ADS 252. A nationality waiver may be required for training providers from countries outside the authorized geographic code.
3. To the greatest extent possible, the Contractor is requested to *maximize resources* by using local business service providers and other counterparts as appropriate.
4. If the Contractor intends to arrange a meeting with ministerial-level host government officials, it shall obtain permission from the COR and/or alternate COR for such a meeting at least one week before any such meeting is likely to be scheduled.

H.47 INFORMATION TECHNOLOGY APPROVAL (APRIL 2018) (DEVIATION NO. M/OAA-DEV-FAR-20-3C) (APRIL 2020)

- (a) Definitions. As used in this contract -- "Information Technology" means
 - (1) Any services or equipment, or interconnected system(s) or subsystem(s) of equipment, that are used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency; where
 - (2) such services or equipment are ' used by an agency' if used by the agency directly or if used by a contractor under a contract with the agency that requires either use of the services or equipment or requires use of the services or equipment to a significant extent in the performance of a service or the furnishing of a product.
 - (3) The term " information technology" includes computers, ancillary equipment (including Imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including provisioned services such as cloud computing and support services that support any point of the lifecycle of the equipment or service), and related resources.
 - (4) The term "information technology" does not include any equipment that is acquired by a contractor incidental to a contract that does not require use of the equipment. (OMB M-15-14)
- (b) The Federal Information Technology Acquisition Reform Act (FITARA) requires Agency Chief Information Officer (CIO) review and approval of contracts or interagency agreements for information technology or information technology services.
- (c) The approved information technology and/or information technology services are specified in the Schedule of this contract. The Contractor must not acquire additional information technology without the prior written approval of the Contracting Officer as specified in this clause.
- (d) Request for Approval Requirements:
 - (1) If the Contractor determines that any information technology in addition to that information technology specified in the Schedule will be necessary to meet the Government's requirements or to facilitate activities in the Government's statement of work, the Contractor must request prior written approval from the Contracting Officer.
 - (2) As part of the request, the Contractor must provide the Contracting Officer a description and an estimate of the total cost of the information technology equipment, software, or

services to be procured under this contract. The Contractor must simultaneously notify the Contracting Officer's Representative (COR) and the Office of the Chief Information Officer at ITAuthorization@usaid.gov.

- (e) The Contracting Officer will provide written approval to the Contractor expressly specifying the information technology equipment, software, or services approved for purchase by the COR and the Agency CIO. Additional clauses or special contract requirements may be applicable and will be incorporated by the Contracting Officer through a modification to the contract.
- (f) Except as specified in the Contracting Officer's written approval, the Government is not obligated to reimburse the Contractor for costs incurred in excess of the information technology equipment, software or services specified in the Schedule.
- (g) The Contractor shall insert the substance of this special contract requirement, including this paragraph (g), in all subcontracts.

H.48 PRIVACY AND SECURITY INFORMATION TECHNOLOGY SYSTEMS INCIDENT REPORTING (APRIL 2018)

- (a) Definitions. As used in this special contract requirement-

"Information" means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.

"Sensitive Information" or "Sensitive But Unclassified" Sensitive But Unclassified (SBU) describes information which warrants a degree of protection and administrative control and meets the criteria for exemption from public disclosure set forth under Sections 552 and 552a of Title 5, United States Code: the Freedom of Information Act and the Privacy Act, 12 FAM 540 Sensitive but Unclassified Information (TL;DS-61;10-01-199), and 12 FAM 541 Scope (TL;DS46;05-26-1995). SBU information includes, but is not limited to: 1) Medical, personnel, financial, investigatory, visa, law enforcement, or other information which, if released, could result in harm or unfair treatment to an individual or group, or could have a negative impact upon foreign policy or relations; and 2) Information offered under conditions of confidentiality, arising in the course of a deliberative process (or a civil discovery process), including attorney-client privilege or work product, and information arising from the advice and counsel of subordinates to policy makers, "Personally Identifiable Information (PII)", means information that can be used to distinguish or trace an individual's identity, such as their name, Social Security Number (SSN), biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. In performing this assessment, it is important to recognize that non-PII can become PII whenever additional information is made publicly available — in any medium and from any source — that, when combined with other available information, could be used to identify an individual. PII examples include name, address, SSN, or other identifying number or code, telephone number, and e-mail address. PII can also consist of a combination of indirect data elements such as gender, race, birth date, geographic indicator (e.g., zip code), and other descriptors used to identify specific individuals. When defining PII for USAID purposes, the term "individual" refers to a citizen of the United States or an alien lawfully admitted for permanent residence.

"National Security Information" means information that has been determined pursuant to Executive Order 13526 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form. Classified or national security information is specifically authorized to be protected from unauthorized disclosure in the interest of national defense or foreign policy under an Executive Order or Act of Congress.

“Information Security Incident” means an occurrence that (1) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or (2) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies.

“Spillage” means a security incident that results in the transfer of classified or other sensitive or sensitive but unclassified information to an information system that is not accredited,(i.e., authorized) for the applicable security level of the data or information.

“Privacy Incident” means a violation or imminent threat of violation of security policies, acceptable use policies, or standard security practices, involving the breach of Personally Identifiable Information (PII), whether in electronic or paper format.

(b) This special contract requirement applies to the Contractor and all personnel providing support under this contract (hereafter referred to collectively as “Contractor”) and addresses specific USAID requirements in addition to those included in the Federal Acquisition Regulation (FAR), Privacy Act of 1974 (5 U.S.C. 552a - the Act), E-Government Act of 2002 - Section 208 and Title III, Federal Information Security Management Act (FISMA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Pub. L. 104-191, 110 Stat. 1936), the Sarbanes-Oxley Act of 2002 (SOX, Pub. L. 107-204, 116 Stat 745), National Institute of Standards and Technology (NIST), Federal Information Processing Standards (FIPS) and the 800-Series Special Publications (SP), Office of Management and Budget (OMB) memorandums, and other laws, mandates, or executive orders pertaining to the development and operations of information systems and the protection of sensitive information and data.

(c) Privacy Act Compliance

Contractors must comply with the Privacy Act of 1974 requirements in the design, development, or operation of any system of records on individuals (as defined in FAR) containing PII developed or operated for USAID or to accomplish a USAID function for a System of Records (SOR).

(d) IT Security and Privacy Training

- (1) All Contractor personnel must complete USAID-provided mandatory security and privacy training prior to gaining access to USAID information systems and annually thereafter.
- (2) The USAID Rules of Behavior and all subsequent updates apply to and must be signed by each user prior to gaining access to USAID facilities and information systems, periodically at the request of USAID. USAID will provide access to the rules of behavior and provide notification as required.
- (3) Security and privacy refresher training must be completed on an annual basis by all contractor and subcontractor personnel providing support under this contract. USAID will provide notification and instructions on completing this training.
- (4) Contractor employees filling roles identified by USAID as having significant security responsibilities must complete role-based training upon assignment of duties and thereafter at a minimum of every three years.
- (5) Within fifteen (15) calendar days of completing the initial IT security training, the contractor must notify the COR in writing that its employees, in performance of the contract, have completed the training. The COR will inform the contractor of any other training requirements.

(e) Information Security and Privacy Incidents

- (1) Information Security Incident Reporting Requirements: All Information Security Incidents involving USAID data or systems must be reported in accordance with the requirements below, even if it is believed that the incident may be limited, small, or insignificant. USAID will determine the magnitude and resulting actions.
 - (i) Contractor employees must report by e-mail all Information Security Incidents to the USAID Service Desk immediately, but not later than 30 minutes, after becoming aware of the Incident, at: CIO-HELPDESK@usaid.gov, regardless of day or time, as well as the

Contracting Officer and Contracting Officer's representative and the Contractor Facilities Security Officer.

Spillage and Information Security Incidents: Upon written notification by the Government of a spillage or information security incident involving classified information, or the Contractor's discovery of a spillage or security incident involving classified information, the Contractor must immediately (within 30 minutes) notify CIO-HELPDESK@usaid.gov and the Office of Security at SECinformationsecurity@usaid.gov to correct the spillage or security incident in compliance with agency-specific instructions. The Contractor will abide by USAID instructions on correcting such a spill or security incident. Contractor employees are strictly prohibited from including any Sensitive Information in the subject or body of any e-mail concerning information security incident reports. To transmit Sensitive Information, Contractor employees must use FIPS 140-2 compliant encryption methods to protect Sensitive Information in attachments to email. Passwords must not be communicated in the same email as the attachment.

(ii) The Contractor must provide any supplementary information or reports related to a previously reported incident directly to CIO-HELPDESK@usaid.gov, upon request. Correspondence must include related ticket number(s) as provided by the USAID Service Desk with the subject line "Action Required: Potential Security Incident".

(2) Privacy Incidents Reporting Requirements: Privacy Incidents may result in the unauthorized use, disclosure, or loss of personally identifiable information (PII), and can result in the loss of the public's trust and confidence in the Agency's ability to safeguard personally identifiable information. PII breaches may impact individuals whose PII is compromised, including potential identity theft resulting in financial loss and/or personal hardship experienced by the individual. Contractor employees must report (by e-mail) all Privacy Incidents to the USAID Service Desk immediately, but not later than 30 minutes, after becoming aware of the incident, at: CIOHELPDESK@usaid.gov, regardless of day or time, as well as the USAID Contracting Officer or Contracting Officer's representative and the Contractor Facilities Security Officer. If known, the report must include information on the format of the PII (oral, paper, or electronic.) The subject line shall read "Action Required: Potential Privacy Incident".

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3) Information Security Incident Response Requirements

(i) All determinations related to Information Security and Privacy Incidents, associated with information Systems or Information maintained by the contractor in support of the activities authorized under this contract, including response activities, notifications to affected individuals and/or Federal agencies, and related services (e.g., credit monitoring) will be made by USAID officials (except reporting criminal activity to law enforcement). The Contractor must not conduct any internal information security incident-related review or response activities that could modify or eliminate any existing technical configuration or information or forensic technical evidence existing at the time of the information security incident without approval from the Agency CIO communicated through the CO or COR.

(ii) The Contractor and contractor employees must provide full and immediate access and cooperation for all activities USAID requests to facilitate Incident Response, including providing all requested images, log files, and event information to address and resolve Information Security Incidents.

(iii.) Incident Response activities that USAID requires may include but are not limited to, inspections; investigations; forensic reviews; data analyses and processing.

(iv) At its discretion, USAID may obtain the assistance of Federal agencies and/or third party firms to aid in Incident Response activities.

(v) All determinations related to an Information Security Incident associated with Information Systems or Information maintained by the Contractor in support of the activities authorized by this contract will be made only by the USAID CIO through the CO or COR.

(vi) The Contractor must report criminal activity to law enforcement organizations upon becoming aware of such activity.

(f) The Contractor shall immediately notify the Contracting Officer in writing whenever it has reason to believe that the terms and conditions of the contract may be affected as a result of the reported incident.

(g) The Contractor is required to include the substance of this provision in all subcontracts. In altering this special contract requirement, require subcontractors to report (by e-mail) information security and privacy incidents directly to the USAID Service Desk at CIOHELPDESK@usaid.gov. A copy of the correspondence shall be sent to the prime Contractor (or higher tier subcontractor) and the Contracting Officer referencing the ticket number provided by the CIO-HELPDESK.

H.49 RESTRICTIONS AGAINST DISCLOSURE (MAY 2016)

(a) The Contractor agrees, in the performance of this contract, to keep the information furnished by the Government or acquired/developed by the Contractor in performance of the contract and designated by the Contracting Officer or Contracting Officer's Representative, in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information, in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Contractor's possession, to those employees needing such information to perform the work described herein, i.e., on a "need-to-know" basis. The Contractor agrees to immediately notify the Contracting Officer in writing in the event that the Contractor determines or has reason to suspect a breach of this requirement has occurred.

(b) All Contractor staff working on any of the described tasks may, at Government request, be required to sign formal non-disclosure and/or conflict of interest agreements to guarantee the protection and integrity of Government information and documents.

(c) The Contractor shall insert the substance of this special contract requirement, including this paragraph (c), in all subcontracts when requiring a restriction on the release of information developed or obtained in connection with performance of the contract.

H.50 PROCUREMENT OF "COVERED MATERIAL"

1. Except as provided in paragraph 2 below, and notwithstanding anything in this contract to the contrary, no funds under this contract may be used for the procurement of "Covered Material" as listed below without the prior written consent of the Contracting Officer. For purposes of this special contract requirement, "Covered Material" shall consist of the following:

- Surgical N95 Filtering Facepiece Respirators, including devices that are disposable half-face-piece non-powered air-purifying particulate respirators intended for use to cover the nose and mouth of the wearer to help reduce wearer exposure to pathogenic biological airborne particulates;
- PPE surgical masks, including masks that cover the user's nose and mouth and provide a physical barrier to fluids and particulate materials;
- PPE nitrile gloves, including those defined at 21 CFR 880.6250 (exam gloves) and 878.4460 (surgical gloves) and such nitrile gloves intended for the same purposes; and
- Level 3 and 4 Surgical Gowns and Surgical Isolation Gowns that meet all of the requirements in ANSI/AAMI PB70 and ASTM F2407-06 and are classified by Surgical Gown Barrier Performance based on AAMI PB70.

For clarity, non-medical grade masks, including cloth masks, are not included in the list of Covered Material above. Further, USAID may modify the list of Covered Material from time-to-time, in writing; any such changes to the list shall apply prospectively.

2. The restrictions set forth in paragraph 1 above shall not apply to the procurement of Covered

Material:

- (a) for the protection of and use by the contractor's or sub-contractor's staff; or
- (b) for the safe and effective continuity of USAID-funded programs, including for the protection of beneficiaries, provided that such items are manufactured locally or in the same geographical region as the country in which USAID is providing assistance, as defined by the U.S. Department of State's regional system ([Africa](#), [East Asia and the Pacific](#), [Europe and Eurasia](#), [Near East](#), [South and Central Asia](#), and [Western Hemisphere](#)), and provided that such items are not, and could not reasonably be expected to be, meant for the United States market.

The CO may change the exemptions set forth in this paragraph in writing; any such changes shall apply prospectively.

3. "Staff" for the purposes of the Exception in 2(a) is defined as any individuals receiving financial compensation from the recipient or contractor or sub-recipient or subcontractor.

4. For each purchase of Covered Material under Exception 2(b), the recipient or contractor must provide the CO with contemporaneously dated documentation that the order of Covered Material is not meant for, and could not reasonably be meant for, the U.S. market. The CO will then upload the statement into ASIST. This documentation can take the form of a simple email verification from a vendor or a brief, contemporaneously dated, written statement or e-mail from the recipient or contractor confirming its conversation with the vendor.

H.51 DEVELOPMENT INFORMATION SOLUTION (DIS)

The Development Information Solution (DIS), USAID's new agency-wide unified portfolio management system, is being deployed to USAID/Ukraine for centralized performance results reporting. DIS is envisioned as a comprehensive single-entry data point for activity-level information. Implementing partner will be trained to enter quantitative data and narratives through the DIS Partner Portal. The Partner Portal does not allow implementing partners access to AIDnet. Implementing partners will also be able to access the Development Experience Clearinghouse (DEC) and the Development Data Library (DDL) through hyperlinks in the DIS Partner Portal.

H.52 GOVERNMENT-FURNISHED PROPERTY

It is anticipated that Government-furnished property, material, and facilities will be required for contractor's performance of this requirement. The required Government-furnished property has been reviewed and it has been determined that no apparent problems exist that will hinder successful performance by the prospective contractor. A listing of the property and its availability date or the scheduled date for acquisition of the property is attached to this RFP (ATTACHMENT J.7). When comprising a Cost Proposal, the Offeror may consider the available equipment, however is not required.

[END OF SECTION H]

PART II - CONTRACT CLAUSES

SECTION I—CONTRACT CLAUSES

I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

Full text of the FAR clauses is available at <https://www.acquisition.gov/far/> and full text of the AIDAR clauses is available at <http://www.usaid.gov/ads/policy/300/aidar> and <http://www.usaid.gov/ads/policy/300/300>.

I.2 NOTICE LISTING CONTRACT CLAUSES INCORPORATED BY REFERENCE

The following contract clauses are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with FAR "52.252-2 CLAUSES INCORPORATED BY REFERENCE" as follows:

NUMBER	TITLE	DATE
Federal Acquisition Regulation (48 CFR Chapter 1)		
52.202-1	DEFINITIONS	(JUN 2020)
52.203-3	GRATUITIES	(APR 1984)
52.203-5	COVENANT AGAINST CONTINGENT FEES	(MAY 2014)
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	(JUN 2020)
52.203-7	ANTI-KICKBACK PROCEDURES	(JUN 2020)
52.203-8	CANCELLATION, RESCISSION AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY	(MAY 2014)
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY	(MAY 2014)
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	(JUN 2020)
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	(APR 2010)
52.203-15	WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009	(JUNE 2010)
52.203-16	PREVENTING PERSONAL CONFLICTS OF INTEREST	(JUNE 2020)
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	(JUN 2020)
52.204-2	SECURITY REQUIREMENTS	(AUG 1996)
52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER	(MAY 2011)
52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL	(JAN 2011)
52.204-10	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS	(JUN 2020)
52.204-12	DATA UNIVERSAL NUMBERING SYSTEM NUMBER MAINTENANCE	(DEC 2012)
52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE	(OCT 2018)
52.204-14	SERVICE CONTRACT REPORTING REQUIREMENTS	(OCT 2016)

52.204-19	INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS	(DEC 2014)
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	(JUN 2020)
52.209-9	UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS	(OCT 2018)
52.209-10	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS	(NOV 2015)
52.210-1	MARKET RESEARCH	(JUN 2020)
52.215-2	AUDIT AND RECORDS—NEGOTIATION	(JUN 2020)
52.215-8	ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT	(OCT 1997)
52.215-10	PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA	(AUG 2011)
52.215-12	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA	(OCT 2010)
52.215-14	INTEGRITY OF UNIT PRICES	(JUN 2020)
52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS	(OCT 2010)
52.215-19	NOTIFICATION OF OWNERSHIP CHANGES	(OCT 1997)
52.215-23	LIMITATIONS ON PASS-THROUGH CHARGES	(JUN 2020)
52.216-7	ALLOWABLE COST AND PAYMENT	(AUG 2018)
52.216-8	FIXED FEE	(JUN 2011)
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS	(OCT 2018)
52.219-9	SMALL BUSINESS SUB-CONTRACTING PLAN	(JUN 2020)
52.219-16	LIQUIDATED DAMAGES-SUBCONTRACTING PLAN	(JAN 1999)
52.222-2	PAYMENT FOR OVERTIME PREMIUMS	(JUL 1990)
52.222-21	PROHIBITION OF SEGREGATED FACILITIES	(APR 2015)
52.222-26	EQUAL OPPORTUNITY	(SEP 2016)
52.222-29	NOTIFICATION OF VISA DENIAL	(APR 2015)
52.222-35	EQUAL OPPORTUNITY FOR VETERANS	(JUN 2020)
52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES	(JUN 2020)
52.222-37	EMPLOYMENT REPORTS ON VETERANS	(JUN 2020)
52.222-38	COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS	(FEB 2016)
52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT	(DEC 2010)
52.223-6	DRUG-FREE WORKPLACE	(MAY 2001)
52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING	(JUN 2020)
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	(JUN 2008)
52.227-14	RIGHTS IN DATA-GENERAL	(MAY 2014)
52.227-23	RIGHTS TO PROPOSAL DATA (TECHNICAL)	(JUN 1987)
52.228-3	WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT)	(JUL 2014)
52.228-7	INSURANCE—LIABILITY TO THIRD PERSONS	(MAR 1996)
52.229-3	FEDERAL, STATE, AND LOCAL TAXES	(FEB 2013)
52.229-8	TAXES - FOREIGN COST-REIMBURSEMENT CONTRACTS	(MAR 1990)
52.230-2	COST ACCOUNTING STANDARDS	(JUN 2020)
52.230-3	DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES	(JUN 2020)
52.230-4	DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES PRACTICES-FOREIGN CONCERNS	(JUN 2020)
52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS	(JUN 2010)
52.232-9	LIMITATION ON WITHHOLDING OF PAYMENTS	(APR 1984)
52.232-17	INTEREST	(MAY 2014)
52.232-18	AVAILABILITY OF FUNDS	(APR 1984)

52.232-20	LIMITATION OF COST	(APR 1984)
52.232-22	LIMITATION OF FUNDS	(APR 1984)
52.232-23	ASSIGNMENT OF CLAIMS	(MAY 2014)
52.232-25	PROMPT PAYMENT	(JAN 2017)
52.232-25	PROMPT PAYMENT—ALTERNATE I	(FEB 2002)
52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER—SYSTEM FOR AWARD MANAGEMENT	(OCT 2018)
52.232-39	UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS	(JUN 2013)
52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS	(DEC 2013)
52.233-1	DISPUTES	(MAY 2014)
52.233-3	PROTEST AFTER AWARD	(AUG 1996)
52.233-3	PROTEST AFTER AWARD—ALTERNATE I	(JUN 1985)
52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM	(OCT 2004)
52.237-3	CONTINUITY OF SERVICES	(JAN 1991)
52.242-1	NOTICE OF INTENT TO DISALLOW COSTS	(APR 1984)
52.242-3	PENALTIES FOR UNALLOWABLE COSTS	(MAY 2014)
52.242-4	CERTIFICATION OF FINAL INDIRECT COSTS	(JAN 1997)
52.242-13	BANKRUPTCY	(JUL 1995)
52.243-2	CHANGES—COST-REIMBURSEMENT	(AUG 1987)
52.243-2	CHANGES—COST-REIMBURSEMENT—ALTERNATE II	(APR 1984)
52.243-7	NOTIFICATION OF CHANGES	(APR 1984)
52.244-2	SUBCONTRACTS	(JUN 2020)
52.244-2	SUBCONTRACTS—ALTERNATE I	(JUN 2007)
52.244-5	COMPETITION IN SUBCONTRACTING	(DEC 1996)
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS	(JUN 2020)
52.245-1	GOVERNMENT PROPERTY	(JAN 2017)
52.245-9	USE AND CHARGES	(APR 2012)
52.246-25	LIMITATION OF LIABILITY—SERVICES	(FEB 1997)
52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS	(JUN 2003)
52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S. - FLAG COMMERCIAL VESSELS	(MAY 2004)
52.249-6	TERMINATION (COST-REIMBURSEMENT)	(MAY 2004)
52.249-14	EXCUSABLE DELAYS	(APR 1984)
52.253-1	COMPUTER GENERATED FORMS	(JAN 1991)

NUMBER	TITLE	DATE
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Agency for International Development Acquisition Regulation (48 CFR Chapter 7)

752.202-1	USAID DEFINITIONS CLAUSE - GENERAL SUPPLEMENT FOR USE IN ALL USAID CONTRACTS (ALTERNATE 70)	(JAN 1990)
752.202-1	USAID DEFINITIONS CLAUSE - SUPPLEMENT FOR USAID CONTRACTS INVOLVING PERFORMANCE OVERSEAS - ALTERNATE 72	(JUN2009)
752.204-2	SECURITY REQUIREMENTS	(FEB 1999)
752.204-72	ACCESS TO USAID FACILITIES AND USAID'S INFORMATION SYSTEMS	(APR 2020)
752.209-71	ORGANIZATIONAL CONFLICTS OF INTEREST DISCOVERED	(JUNE 1993)
752.211-70	LANGUAGE AND MEASUREMENT	(JUN 1992)
752.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS	(MAR 2015)
752.219-70	USAID MENTOR-PROTÉGÉ PROGRAM	(JUL 2007)
752.222-70	USAID DISABILITY POLICY	(DEC 2004)
752.225-70	SOURCE AND NATIONALITY REQUIREMENTS	(FEB 2012)

752.227-14	RIGHTS IN DATA - GENERAL	(OCT 2007)
752.228-3	WORKER'S COMPENSATION INSURANCE (DEFENSE BASE ACT)	(DEC 1991)
752.228-7	INSURANCE—LIABILITY TO THIRD PERSONS	(JULY 1997)
752.228-70	MEDICAL EVACUATION (MEDEVAC) SERVICES	(JULY 2007)
752.229-70	FEDERAL, STATE AND LOCAL TAXES	
752.231-71	SALARY SUPPLEMENTS FOR HG EMPLOYEES	(MAR 2015)
752.242-70	PERIODIC PROGRESS REPORTS	(OCT 2007)
752.245-70	GOVERNMENT PROPERTY – USAID REPORTING REQUIREMENTS	(OCT 2017)
752.245-71	TITLE AND CARE OF PROPERTY	(APR 1984)
752.7001	BIOGRAPHICAL DATA	(JUL 1997)
752.7002	TRAVEL AND TRANSPORTATION	(JAN 1990)
752.7004	EMERGENCY LOCATOR INFORMATION	(JUL 1997)
752.7005	SUBMISSION REQUIREMENTS FOR DEVELOPMENT EXPERIENCE DOCUMENTS	(SEPT 2013)
752.7006	NOTICES	(APR 1984)
752.7007	PERSONNEL COMPENSATION	(JUL 2007)
752.7008	USE OF GOVERNMENT FACILITIES OR PERSONNEL	(APR 1984)
752.7010	CONVERSION OF U.S. DOLLARS TO LOCAL CURRENCY	(APR 1984)
752.7011	ORIENTATION AND LANGUAGE TRAINING	(APR 1984)
752.7013	CONTRACTOR-MISSION RELATIONSHIPS	(JUN 2020)
752.7014	NOTICE OF CHANGES IN TRAVEL REGULATIONS	(JAN 1990)
752.7015	USE OF POUCH FACILITIES	(JUL 1997)
752.7018	HEALTH AND ACCIDENT COVERAGE FOR USAID PARTICIPANT TRAINEES	(JAN 1999)
752.7019	PARTICIPANT TRAINING	(JAN 1999)
752.7023	REQUIRED VISA FORM FOR USAID PARTICIPANTS	(APR 1984)
752.7025	APPROVALS	(APR 1984)
752.7028	DIFFERENTIAL AND ALLOWANCES	(JUL 1996)
752.7029	POST PRIVILEGES	(JUL 1993)
752.7031	LEAVE AND HOLIDAYS	(OCT 1989)
752.7033	PHYSICAL FITNESS	(JUL 1997)
752.7034	ACKNOWLEDGMENT AND DISCLAIMER	(DEC 1991)
752.7035	PUBLIC NOTICES	(DEC 1991)
752.7038	NONDISCRIMINATION AGAINST END-USERS OF SUPPLIES AND SERVICES	(OCT 2016)

I.3 FAR 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)

(a) Definitions. As used in this clause--

“Internal confidentiality agreement or statement” means a confidentiality agreement or any other written statement that the contractor requires any of its employees or subcontractors to sign regarding nondisclosure of contractor information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that contractor employees or subcontractors sign at the behest of a Federal agency.

“Subcontract” means any contract as defined in subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm (including a consultant) that furnishes supplies or services to or for a prime contractor or another subcontractor.

(b) The Contractor shall not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(c) The Contractor shall notify current employees and subcontractors that prohibitions and restrictions of any preexisting internal confidentiality agreements or statements covered by this clause, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of this clause, are no longer in effect.

(d) The prohibition in paragraph (b) of this clause does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(e) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, (Pub. L. 113-235), and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) use of funds appropriated (or otherwise made available) is prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts under such contracts.

I.4 FAR 52.204-1 APPROVAL OF CONTRACT (DEC 1989)

This contract is subject to the written approval of the Contracting Officer and must not be binding until so approved.

I.5 AIDAR 752.7025 APPROVALS (APR 1984)

All approvals required to be given under the contract by the Contracting Officer or the Mission Director shall be in writing and, except when extraordinary circumstances make it impracticable, shall be requested by the Contractor sufficiently in advance of the contemplated action to permit approval, disapproval or other disposition prior to that action. If, because of existing conditions, it is impossible to obtain prior written approval, the approving official may, at his discretion, ratify the action after the fact.

I.6 FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder must not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days.

I.7 FAR 52.222-50 – COMBATING TRAFFICKING IN PERSONS (OCT 2020)

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

Agent means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

Coercion means-

- (iii) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

- (1) Any item of supply (including construction material) that is-
 - (i) A commercial item (as defined in paragraph (1) of the definition at FAR [2.101](#));
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

"Commercially available off-the-shelf (COTS) item" means-

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Employee means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

Forced Labor means knowingly providing or obtaining the labor or services of a person-

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

Involuntary servitude includes a condition of servitude induced by means of-

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

Recruitment fees means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

- (1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for-
 - (i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;
 - (ii) Advertising
 - (iii) Obtaining permanent or temporary labor certification, including any associated fees;

- (iv) Processing applications and petitions;
- (v) Acquiring visas, including any associated fees;
- (vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;
- (vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;
- (viii) An employer's recruiters, agents or attorneys, or other notary or legal fees;
- (ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;
- (x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;
- (xi) Transportation and subsistence costs-
 - (A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and
 - (B) From the airport or disembarkation point to the worksite;
- (xii) Security deposits, bonds, and insurance; and
- (xiii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is-

- (i) Paid in property or money;
- (ii) Deducted from wages;
- (iii) Paid back in wage or benefit concessions;
- (iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or
- (v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to-
 - (A) Agents;
 - (B) Labor brokers;
 - (C) Recruiters;
 - (D) Staffing firms (including private employment and placement firms);
 - (E) Subsidiaries/affiliates of the employer;
 - (F) Any agent or employee of such entities; and
 - (G) Subcontractors at all tiers.

Severe forms of trafficking in persons means-

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) *Policy*. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not-

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5) (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees or potential employees recruitment fees;

(7) (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment-

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that-

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is-

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still

needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Contractor requirements.* The Contractor shall-

(1) Notify its employees and agents of-

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* (1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of-

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also [18 U.S.C. 1351](#), Fraud in Foreign Labor Contracting, and [52.203-13\(b\)\(3\)\(i\)\(A\)](#), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in-

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(7) Suspension or debarment.

(f) *Mitigating and aggravating factors.* When determining remedies, the Contracting Officer may consider the following:

(1) *Mitigating factors.* The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) *Aggravating factors.* The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) *Full cooperation.*

(1) The Contractor shall, at a minimum-

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 ([22 U.S.C. chapter 78](#)), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not-

(i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Contractor from-

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) *Compliance plan.* (1) This paragraph (h) applies to any portion of the contract that-

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$550,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate-

(i) To the size and complexity of the contract; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) *Minimum requirements.* The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employees or potential employees and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) *Posting.* (i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) *Certification.* Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that-

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontractor or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either-

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts.* (1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that-

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$550,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause."

I.8 FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUNE 1987)

Except for data contained on pages of Contractor's proposal, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government must have unlimited rights (as defined in the "Rights in Data-General" clause contained in this contract) in and to the technical data contained in the proposal dated February 25, 2020, upon which this contract is based.

I.9 FAR 52.229-8 TAXES-FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of Ukraine or from which the Contractor or any subcontractor under this contract is exempt under the laws of Ukraine, must not constitute an allowable cost under this contract.

(b) If the Contractor or subcontractor under this contract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction must be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

I.10 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) [(DEVIATION JUN 2020)]

(a) **(1) In accordance with 31 U.S.C. 3903 and 10 U.S.C. 2307**, upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract **in accordance with the accelerated payment date established**, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, **with a goal of 15 days** after receipt of a proper invoice and all other required documentation from the small business subcontractor **if a specific payment date is not established by contract.**

(2) The Contractor agrees to make such payments to its small business subcontractors without any further consideration from or fees charged to the subcontractor.

- (b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.
- (c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

I.11 FAR 52.247-67 SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006)

(a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid-

- (1) By the Contractor under a cost-reimbursement contract; and
- (2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(c)) Contractors shall submit the above referenced transportation documents to- the COR (email address as included in the COR Designation Letter).

I.12 AIDAR 752.7037 CHILD SAFEGUARDING STANDARDS (AUG 2016)

(a) Implementation of activities under this award may involve children, or personnel engaged in the implementation of the award may come into contact with children, which could raise the risk of child abuse, exploitation, or neglect within this award. The contractor agrees to abide by the following child safeguarding core principles:

- (1) Ensure compliance with host country and local child welfare and protection legislation or international standards, whichever gives greater protection, and with U.S. law where applicable;
- (2) Prohibit all personnel from engaging in child abuse, exploitation, or neglect;
- (3) Consider child safeguarding in project planning and implementation to determine potential risks to children that are associated with project activities and operations;
- (4) Apply measures to reduce the risk of child abuse, exploitation, or neglect, including, but not limited to, limiting unsupervised interactions with children; prohibiting exposure to pornography; and complying with applicable laws, regulations, or customs regarding the photographing, filming, or other image generating activities of children;
- (5) Promote child-safe screening procedures for personnel, particularly personnel whose work brings them in direct contact with children; and
- (6) Have a procedure for ensuring that personnel and others recognize child abuse, exploitation, or neglect; mandating that personnel and others report allegations; investigating

and managing allegations; and taking appropriate action in response to such allegations, including, but not limited to, dismissal of personnel.

(b) The contractor must also include in the code of conduct for all personnel implementing USAID-funded activities, the child safeguarding principles in paragraphs (a)(1) through (6) of this clause.

(c) The following definitions apply for purposes of this clause:

(1) Child. A child or children are defined as persons who have not attained 18 years of age.

(2) Child abuse, exploitation, or neglect. Constitutes any form of physical abuse; emotional ill-treatment; sexual abuse; neglect or insufficient supervision; trafficking; or commercial, transactional, labor, or other exploitation resulting in actual or potential harm to the child's health, well-being, survival, development, or dignity. It includes, but is not limited to: Any act or failure to act which results in death, serious physical or emotional harm to a child, or an act or failure to act which presents an imminent risk of serious harm to a child.

(3) Emotional abuse or ill treatment. Constitutes injury to the psychological capacity or emotional stability of the child caused by acts, threats of acts, or coercive tactics. Emotional abuse may include, but is not limited to: Humiliation, control, isolation, withholding of information, or any other deliberate activity that makes the child feel diminished or embarrassed.

(4) Exploitation. Constitutes the abuse of a child where some form of remuneration is involved or whereby the perpetrators benefit in some manner. Exploitation represents a form of coercion and violence that is detrimental to the child's physical or mental health, development, education, or well-being.

(5) Neglect. Constitutes failure to provide for a child's basic needs within USAID funded activities that are responsible for the care of a child in the absence of the child's parent or guardian.

(6) Physical abuse. Constitutes acts or failures to act resulting in injury (not necessarily visible), unnecessary or unjustified pain or suffering without causing injury, harm or risk of harm to a child's health or welfare, or death. Such acts may include, but are not limited to: Punching, beating, kicking, biting, shaking, throwing, stabbing, choking, or hitting (regardless of object used), or burning. These acts are considered abuse regardless of whether they were intended to hurt the child.

(7) Sexual abuse. Constitutes fondling a child's genitals, penetration, incest, rape, sodomy, indecent exposure, and exploitation through prostitution or the production of pornographic materials.

(d) The contractor must insert this clause in all subcontracts under this award.

I.13 52.204-24 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2020)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it “does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument” in the provision at [52.204-26](#), Covered Telecommunications Equipment or Services—Representation, or in paragraph (v) of the provision at [52.212-3](#), Offeror Representations and Certifications-Commercial Items.

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

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services”.

(d) *Representation.* The Offeror represents that—

(1) It will, will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds “will” in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It does, does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds “does” in paragraph (d)(2) of this section.

(e) *Disclosures.* (1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded “will” in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded “does” in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

I.14 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2020)

(a) *Definitions.* As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.* (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#).

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.* (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any

system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

I.15 752.252-2 AIDAR CLAUSES INCORPORATED BY REFERENCE (MAR 2015)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of all AIDAR contract provisions and contract clauses are available at the following site: <http://auslnxapvweb01.usaid.gov/ADS/300/aidar.pdf>.

I.16 AIDAR 752.7013 CONTRACTOR-MISSION RELATIONSHIPS (JUNE 2018) (DEVIATION M/OAA-DEV-AIDAR-20-03c JUNE 2020)

- (a) The Contractor acknowledges that this contract is an important part of the United States Foreign Assistance Program and agrees that its operations and those of its employees in the Cooperating Country will be carried out in such a manner as to be fully commensurate with the responsibility which this entails. This responsibility includes the Contractor ensuring that employees act in a manner consistent with the standards for United Nations (UN) employees in Section 3 of the UN Secretary General's Bulletin - Special Measures for Protection from Sexual Exploitation and Sexual Abuse (ST/SGB/2003/13).
- (b) The Mission Director is the chief representative of USAID in the Cooperating Country. In this capacity, the Mission Director is responsible for both the total USAID program in the cooperating country including certain administrative responsibilities set forth in this contract, and for advising USAID regarding the performance of the work under the contract and its effect on the United States Foreign Assistance Program. Although the Contractor will be responsible for all professional, technical, and administrative details of the work called for by the contract, it must be under the guidance of the Mission Director in matters relating to

foreign policy. The Chief of Party must keep the Mission Director currently informed of the progress of the work under the contract.

- (c) If the Contractor determines that the conduct of any employee is not in accordance with the preceding paragraphs, the Contractor's Chief of Party must consult with the USAID contracting officer and the Mission Director and the employee involved and must recommend to the Contractor a course of action with regard to such employee.
- (d) The parties recognize the rights of the U.S. Ambassador to direct the removal from a country of any U.S. citizen or the discharge from this contract of any individual (U.S., third-country, or cooperating-country national) when, at the discretion of the Ambassador, the interests of the United States so require. Under these circumstances termination of an employee and replacement by an acceptable substitute must be at no cost to USAID.
- (e) If it is determined, under paragraphs (c) and (d) above, that the services of such employee must be terminated, the Contractor must use its best efforts to cause the return of such employee to the United States or third country point of origin as appropriate.

I.17 FAR 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (JUL 2018)

(a) Definitions. As used in this clause—

Covered article means any hardware, software, or service that—

- (1) Is developed or provided by a covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means—

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) Prohibition. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Contractor is prohibited from—

- (1) Providing any covered article that the Government will use on or after October 1, 2018; and
- (2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) Reporting requirement. (1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in

the case of the Department of Defense, to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items.

I.18 AIDAR 752.7101 VOLUNTARY POPULATION PLANNING ACTIVITIES (JUNE 2008)

a) Requirements for Voluntary Sterilization Program. None of the funds made available under this Contract shall be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any individual to practice sterilization.

b) Prohibition on Abortion-Related Activities.

1) No funds made available under this Contract will be used to finance, support, or be attributed to the following activities: (i) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (ii) special fees or incentives to any person to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family Planning ; and (v) lobbying for or against abortion. The term "motivate", as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options.

2) No funds made available under this Contract will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent or consequences of abortions is not precluded.

c) The Contractor shall insert this provision in all subcontracts.

I.19 52.232-16 PROGRESS PAYMENTS (APR 2012) [(DEVIATION JUN 2020)]

The Government will make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts of \$2,500 or more approved by the Contracting Officer, under the following conditions:

(a) Computation of amounts.

(1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as **90** percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract. The Contracting Officer will consider cost of money that would be allowable under FAR 31.205-10 as an incurred cost for progress payment purposes.

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to subcontractors-

- (i) In accordance with the terms and conditions of a subcontract or invoice; and
- (ii) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(3) The Government will exclude accrued costs of Contractor contributions under employee pension plans until actually paid unless-

- (i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and
- (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(4) The Contractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1) of this clause:

- (i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.
- (ii) Costs incurred by subcontractors or suppliers.
- (iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.
- (iv) Payments made or amounts payable to subcontractors or suppliers, except for-
 - (A) Completed work, including partial deliveries, to which the Contractor has acquired title; and
 - (B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(5) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(6) The total amount of progress payments shall not exceed **90** percent of the total contract price.

(7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by paragraphs (a)(4) or (a)(5) of this clause, the Contractor shall repay the amount of such excess to the Government on demand.

(8) Notwithstanding any other terms of the contract, the Contractor agrees not to request progress payments in dollar amounts of less than \$2,500. The Contracting Officer may make exceptions.

(9) The costs applicable to items delivered, invoiced, and accepted shall not include costs in excess of the contract price of the items.

(b) *Liquidation*. Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or **90**

percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) of this clause).

(2) Performance of this contract is endangered by the Contractor's—

(i) Failure to make progress; or

(ii) Unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The fair value of the undelivered work is less than the amount of unliquidated progress payments for that work.

(6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) of this clause, and that rate is less than the progress payment rate stated in paragraph (a)(1) of this clause.

(d) Title. (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire

title;

(iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (d)(2)(ii) of this clause; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract; *e.g.*, the termination clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not-

- (i) Delivered to, and accepted by, the Government under this contract; or
- (ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is lost (see 45.101).

(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) Reports, forms, and access to records. (1) The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information (including estimates to complete) reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(2) The Contractor shall furnish estimates to complete that have been developed or updated within six months of the date of the progress payment request. The estimates to complete shall represent the Contractor's best estimate of total costs to complete all remaining contract work required under the contract. The estimates shall include sufficient detail to permit Government verification.

(3) Each Contractor request for progress payment shall:

- (i) Be submitted on Standard Form 1443, Contractor's Request for Progress Payment, or the electronic equivalent as required by agency regulations, in accordance with the form instructions and the contract terms; and
- (ii) Include any additional supporting documentation requested by the Contracting Officer.

(h) *Special terms regarding default.* If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) Reservations of rights.

(1) No payment or vesting of title under this clause shall-

- (i) Excuse the Contractor from performance of obligations under this contract; or
- (ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause-

- (i) Shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract; and
- (ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) *Financing payments to subcontractors.* The financing payments to subcontractors

mentioned in paragraphs (a)(1) and (a)(2) of this clause shall be all financing payments to subcontractors or divisions, if the following conditions are met:

- (1) The amounts included are limited to-
 - (i) The unliquidated remainder of financing payments made; plus
 - (ii) Any unpaid subcontractor requests for financing payments.
- (2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery; or, if the subcontractor is a small business concern, 4 months.
- (3) If the financing payments are in the form of progress payments, the terms of the subcontract or interdivisional order concerning progress payments-
 - (i) Are substantially similar to the terms of this clause for any subcontractor that is a large business concern, or this clause with its Alternate I for any subcontractor that is a small business concern;
 - (ii) Are at least as favorable to the Government as the terms of this clause;
 - (iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;
 - (iv) Are in conformance with the requirements of FAR 32.504(e); and
 - (v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if-
 - (A) The Contractor defaults; or
 - (B) The subcontractor becomes bankrupt or insolvent.
- (4) If the financing payments are in the form of performance-based payments, the terms of the subcontract or interdivisional order concerning payments-
 - (i) Are substantially similar to the Performance-Based Payments clause at FAR 52.232-32 and meet the criteria for, and definition of, performance-based payments in FAR part 32;
 - (ii) Are in conformance with the requirements of FAR 32.504(f); and
 - (iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if-
 - (A) The Contractor defaults; or
 - (B) The subcontractor becomes bankrupt or insolvent.
- (5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments-
 - (i) Are constructed in accordance with FAR 32.206(c) and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR parts 2 and 12;
 - (ii) Are in conformance with the requirements of FAR 32.504(g); and
 - (iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if-
 - (A) The Contractor defaults; or
 - (B) The subcontractor becomes bankrupt or insolvent.
- (6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.
- (7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.
- (8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and

transferred to the Contractor.

(9) To facilitate small business participation in subcontracting under this contract, the Contractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in FAR 32.113. The Contractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.

(k) *Limitations on undefinitized contract actions.* Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A “contract action” is any action resulting in a contract, as defined in subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(l) *Due date.* The designated payment office will make progress payments on the 30th day after the designated billing office receives a proper progress payment request. In the event that the Government requires an audit or other review of a specific progress payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date. Progress payments are considered contract financing and are not subject to the interest penalty provisions of the Prompt Payment Act.

(m) *Progress payments under indefinite-delivery contracts.* The Contractor shall account for and submit progress payment requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract.

I.20 52.228-11 INDIVIDUAL SURETY—PLEDGE OF ASSETS (FEB 2021)

(a)The Contractor shall obtain from each person acting as an individual surety on a performance bond or a payment bond—

(1)A pledge of assets that meets the eligibility, valuation, and security requirements described in the Federal Acquisition Regulation (FAR) [28.203-1](#); and

(2)Standard Form 28, Affidavit of Individual Surety.

(b)The Contracting Officer may release a portion of the security interest on the individual surety's assets based upon substantial performance of the Contractor's obligations under its performance bond. The security interest in support of a performance bond shall be maintained—

(1) *Contracts for the construction, alteration, or repair of any public building or public work of the Federal Government exceeding \$150,000 (40 U.S.C. 3131).* Until completion of any warranty period, or for 1 year following final payment, whichever is later.

(2) *Contracts subject to alternative payment protection (see FAR [28.102-1\(b\)\(1\)](#)).* For the full contract performance period plus 1 year.

(3) *Other contracts not subject to the requirements of paragraph (b)(1) of this clause.* Until completion of any warranty period, or for 90 days following final payment, whichever is later.

(c) A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release. The security interest on the individual surety's assets in support of a payment bond shall be maintained—

(1) *Contracts for the construction, alteration, or repair of any public building or public work of the Federal Government exceeding \$150,000 which require performance and payment bonds (40 U.S.C. 3131).* For 1 year following final payment, or until resolution of all pending claims filed against the payment bond during the 1-year period following final payment, whichever is later.

(2) *Contracts subject to alternative payment protection (see FAR [28.102-1\(b\)\(1\)](#)).* For the full contract performance period plus 1 year.

(3) Other contracts not subject to the requirements of paragraph (c)(1) of this clause. For 90 days following final payment.

(d) The Contracting Officer may allow the Contractor to substitute an individual surety, for a performance or payment bond, after contract award. The Contractor shall comply with the requirements of paragraph (a) of this clause within the timeframe established by the Contracting Officer.

I.21 52.228-16 PERFORMANCE AND PAYMENT BONDS-OTHER THAN CONSTRUCTION (NOV 2006) [(DEVIATION JUN 2020)]

- (a) *Definitions.* As used in this clause-
“Original contract price” means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.
- (b) The Contractor shall furnish a performance bond (Standard Form 1418, **except that a seal is not required**) for the protection of the Government in an amount equal to__percent of the original contract price and a payment bond Standard Form 1416, **except that a seal is not required**) in an amount equal to_____percent of the original contract price.
- (c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within _____days, but in any event, before starting work.
- (d) The Government may require additional performance and payment bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bonds or to obtain additional bonds.
- (e) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain

bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register*, or may be obtained from the:

U.S. Department of the Treasury,
Financial Management Service,
Surety Bond Branch,
3700 East West Highway,
Room 6 F01
Hyattsville, MD 20782.
Or via the internet at <http://www.fms.treas.gov/c570/>.

I.22 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (JUNE 2020)

(a) *Definitions. As used in this clause—*

Agent means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

Full cooperation-

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require-

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from-

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

Principal means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

Subcontractor means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

United States, means the 50 States, the District of Columbia, and outlying areas.

(b) *Code of business ethics and conduct.* (1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall-

(i) Have a written code of business ethics and conduct; and

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) *The Contractor shall-*

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3) (i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed-

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act ([31 U.S.C. 3729-3733](#)).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, [5 U.S.C. Section 552](#), without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR [2.101](#). The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including-

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title [18 U.S.C.](#) or a violation of the civil False Claims Act ([31 U.S.C. 3729-3733](#)).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) *Subcontracts.* (1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that exceed the threshold specified in FAR [3.1004\(a\)](#) on the date of subcontract award and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

I.23 52.217-2 CANCELLATION UNDER MULTI-YEAR CONTRACTS (OCTOBER 1997)

(a) "Cancellation," as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer-

(1) Notifies the Contractor that funds are not available for contract performance for any subsequent program year; or

(2) Fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the Default clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Government clause.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

(d) The cancellation charge will cover only-

(1) Costs-

(i) Incurred by the Contractor and/or subcontractor;

(ii) Reasonably necessary for performance of the contract; and

(iii) That would have been equitably amortized over the entire multi-year contract period but, because of the cancellation, are not so amortized; and

(2) A reasonable profit or fee on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date-

(1) Of notification of the nonavailability of funds; or

(2) Specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor's claim may include-

(1) Reasonable nonrecurring costs (see [subpart 15.4](#) of the Federal Acquisition Regulation) which are applicable to and normally would have been amortized in all supplies or services which are multi-year requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include-

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. "Useful commercial life" means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

[END OF SECTION I]

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J - LIST OF ATTACHMENTS

ATTACHMENT J.1 - SF-1420-17 CONTRACTOR BIOGRAPHICAL DATA SHEET

ATTACHMENT J.2 - SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

ATTACHMENT J.3 - CONTRACTOR PERFORMANCE REPORT—SHORT FORM

ATTACHMENT J.4 - SUMMARY BUDGET FORMAT

ATTACHMENT J.5 - IDENTIFICATION OF PRINCIPAL GEOGRAPHIC CODES

ATTACHMENT J.6 – REQUEST FOR CATEGORICAL EXCLUSION (RCE) (2021-UKR-018)

ATTACHMENT J.7 – GOVERNMENT-FURNISHED PROPERTY

[END OF SECTION J]

PART IV – REPRESENTATIONS AND INSTRUCTIONS

SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

K.1 NOTICE LISTING SOLICITATION PROVISIONS INCORPORATED BY REFERENCE

The following solicitation provisions pertinent to this section are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with FAR provision at FAR "52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE" in Section L of this solicitation. See <http://acquisition.gov/far/index.html> for electronic access to the full text of a FAR clause.

NUMBER TITLE DATE

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)

52.203-11	CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	SEP 2007
52.204-19	INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS	DEC 2014
52.209-2	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS—REPRESENTATION	NOV 2015
52.225-25	PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGING IN CERTAIN ACTIVITIES OR TRANSACTIONS RELATING TO IRAN—REPRESENTATION AND CERTIFICATIONS	JUN 2019
52.222-56	CERTIFICATION REGARDING TRAFFICKING IN PERSONS COMPLIANCE PLAN	MAR 2015

K.2 FAR 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS (DEC 2019)

(a)

(1) The North American Industry Classification System (NAICS) code for this acquisition is 541990.

(2) The small business size standard is _____ [insert size standard].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b)

(1) If the provision at 52.204-7, System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the provision at 52.204-7, System for Award Management, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:

(i) Paragraph (d) applies.

(ii) Paragraph (d) does not apply and the Offeror has completed the individual representations and certifications in the solicitation.

(c)

(1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

(i) 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

- (A) The acquisition is to be made under the simplified acquisition procedures in [part 13](#);
- (B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or
- (C) The solicitation is for utility services for which rates are set by law or regulation.
- (ii) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.
- (iii) [52.203-18](#), Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation. This provision applies to all solicitations.
- (iv) [52.204-3](#), Taxpayer Identification. This provision applies to solicitations that do not include the provision at [52.204-7](#), System for Award Management.
- (v) [52.204-5](#), Women-Owned Business (Other Than Small Business). This provision applies to solicitations that-
- (A) Are not set aside for small business concerns;
- (B) Exceed the simplified acquisition threshold; and
- (C) Are for contracts that will be performed in the United States or its outlying areas.
- (vi) [52.204-26](#), Covered Telecommunications Equipment or Services-Representation. This provision applies to all solicitations.
- (vii) [52.209-2](#), Prohibition on Contracting with Inverted Domestic Corporations-Representation.
- (viii) [52.209-5](#), Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.
- (ix) [52.209-11](#), Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.
- (x) [52.214-14](#), Place of Performance-Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.
- (xi) [52.215-6](#), Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.
- (xii) [52.219-1](#), Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.
- (A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.
- (B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.
- (xiii) [52.219-2](#), Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.
- (xiv) [52.222-22](#), Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at [52.222-26](#), Equal Opportunity.
- (xv) [52.222-25](#), Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at [52.222-26](#), Equal Opportunity.
- (xvi) [52.222-38](#), Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.
- (xvii) [52.223-1](#), Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or include the clause at [52.223-2](#), Affirmative Procurement of Biobased Products Under Service and Construction Contracts.
- (xviii) [52.223-4](#), Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA-designated items.
- (xix) [52.223-22](#), Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representation. This provision applies to solicitations that include the clause at [52.204-7](#).)
- (xx) [52.225-2](#), Buy American Certificate. This provision applies to solicitations containing the clause at [52.225-1](#).
- (xxi) [52.225-4](#), Buy American-Free Trade Agreements-Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at [52.225-3](#).

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$80,317, the provision with its Alternate II applies.

(D) If the acquisition value is \$80,317 or more but is less than \$100,000, the provision with its Alternate III applies.

(xxii) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-5.

(xxiii) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan-Certification. This provision applies to all solicitations.

(xxiv) 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications. This provision applies to all solicitations.

(xxv) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

(2) The following representations or certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

___ (i) 52.204-17, Ownership or Control of Offeror.

___ (ii) 52.204-20, Predecessor of Offeror.

___ (iii) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.

___ (iv) 52.222-48, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment- Certification.

___ (v) 52.222-52, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Certification.

___ (vi) 52.223-9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

___ (vii) 52.227-6, Royalty Information.

___ (A) Basic.

___ (B) Alternate I.

___ (viii) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

(e) The Offeror has completed the annual representations and certifications electronically in SAM website accessed through <https://www.sam.gov>. After reviewing the SAM information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [Offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

Far Clause	Title	Date	Change

Any changes provided by the Offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on SAM.

[Note: FAR 52.204-7, 'System for Award Management' is included in Section L of this RFP. Thus, paragraph (d) of the above provision applies.]

K.3 52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014)

The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

K.4 FAR 52.209-5 CERTIFICATION REGARDING RESPONSIBILITY MATTERS (OCT 2015)

- (a)(1) The Offeror certifies, to the best of its knowledge and belief, that—
- (i) The Offeror and/or any of its Principals—
 - (A) Are are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
 - (B) Have have not , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (if Offeror checks "have", the Offeror shall also see [52.209-7](#), if included in this solicitation);
 - (C) Are are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;
 - (D) Have , have not , within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied.
 - (1) Federal taxes are considered delinquent if both of the following criteria apply:
 - (i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - (ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - (2) Examples.
 - (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
 - (ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
 - (iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.
 - (iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).
 - (ii) The Offeror has has not , within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principal," for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

K.5 FAR 52.209-7 INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)

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

"Administrative proceeding" means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

"Federal contracts and grants with total value greater than \$10,000,000" means—

(1) The total value of all current, active contracts and grants, including all priced options; and

(2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

"Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

(b) The Offeror has does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the Offeror checked "has" in paragraph (b) of this provision, the Offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the Offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the Offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the Offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the Offeror has provided the requested information with regard to each occurrence.

(d) The Offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the System for Award Management, which can be accessed via <https://www.sam.gov> (see [52.204-7](#)).

K.6 FAR 52.209-11 REPRESENTATION BY CORPORATIONS REGARDING DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW (FEB 2016)

(a) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, the Government will not enter into a contract with any corporation that—

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

(1) It is is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(2) It is is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

K.7 FAR 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The Offeror represents that—

It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

It has, has not filed all required compliance reports; and

Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

K.8 FAR 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

The Offeror represents that—

(a) It has developed and has on file, has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or

(b) It has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

K.9 FAR 52.230-1 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (OCT 2015)

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III. Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract. If the Offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

I. DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION

(a) Any contract in excess of \$750,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

(b) Any Offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the Offeror's proposal under this solicitation unless the Offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the Offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

(1) Certificate of Concurrent Submission of Disclosure Statement. The Offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows:

(i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable; and

(ii) One copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: _____ Name and Address of Cognizant ACO or Federal Official Where Filed: _____

The Offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

(2) Certificate of Previously Submitted Disclosure Statement. The Offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____ Name and Address of Cognizant ACO or Federal Official Where Filed: _____

The Offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

(3) Certificate of Monetary Exemption. The Offeror hereby certifies that the Offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The Offeror further certifies that if such status changes before an award resulting from this proposal, the Offeror will advise the Contracting Officer immediately.

(4) Certificate of Interim Exemption. The Offeror hereby certifies that (i) the Offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the Offeror is not yet required to submit a Disclosure

Statement. The Offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the Offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under paragraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS—ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the Offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the Offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

The Offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the Offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the Offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The Offeror further certifies that if such status changes before an award resulting from this proposal, the Offeror will advise the Contracting Officer immediately.

Caution: An Offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the Offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The Offeror shall indicate below whether award of the contemplated contract would, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

Yes No

K.10 FAR 52.230-7 PROPOSAL DISCLOSURE—COST ACCOUNTING PRACTICE CHANGES (APR 2005)

The Offeror shall check “yes” below if the contract award will result in a required or unilateral change in cost accounting practice, including unilateral changes requested to be desirable changes.

Yes No

If the Offeror checked “Yes” above, the Offeror shall—

(1) Prepare the price proposal in response to the solicitation using the changed practice for the period of performance for which the practice will be used; and

(2) Submit a description of the changed cost accounting practice to the Contracting Officer and the Cognizant Federal Agency Official as pricing support for the proposal.

K.11 AUTHORIZED NEGOTIATORS

The Offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations: [list names, titles, and telephone numbers of the authorized negotiators].

K.12 SIGNATURE

By signature hereon, or on an offer incorporating these Representations, Certifications, and Other Statements of Offerors, the Offeror certifies that they are accurate, current, and complete, and that the Offeror is aware of the penalty prescribed in 18 U.S.C. 1001 for making false statements in offers.

Solicitation No. _____
Offer/Proposal No. _____
DUNS No. _____
Date of Offer _____
Name of Offeror _____
Typed Authorized Official's Name _____
Typed Authorized Official's Title _____
Signature _____ Date _____

[END OF SECTION K]

SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

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

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

USAID: <http://www.usaid.gov>
FAR: <http://acquisition.gov/far/index.html>
AIDAR: <http://www.usaid.gov/ads/policy/300/aidar>
ADS 300: <http://www.usaid.gov/who-we-are/agency-policy/series-300>

The following solicitation provisions and contract clauses pertinent to this section are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with FAR "52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE" and FAR "52.252-2 CLAUSES INCORPORATED BY REFERENCE" in Section L of this solicitation.

NUMBER	TITLE	DATE
Federal Acquisition Regulation (48 CFR Chapter 1)		
52.204-7	SYSTEM FOR AWARD MANAGEMENT	(OCT 2018)
52-214-34	SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE	(APR 1991)
52-214-35	SUBMISSION OF OFFERS IN U.S. CURRENCY	APR 1991
52.215-1	INSTRUCTIONS TO OFFERORS—COMPETITIVE ACQUISITION	(JAN 2017)
52.215-16	FACILITIES CAPITAL COST OF MONEY	(JUN 2003)
52.215-22	LIMITATION ON PASS-THROUGH CHARGES – IDENTIFICATION OF SUBCONTRACT EFFORT	(OCT 2009)
52.222-24	PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION	(FEB 1999)
52.222-46	EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES	(FEB 1993)
52.237-10	IDENTIFICATION OF UNCOMPENSATED OVERTIME	(MAR 2015)

L.2 WAIVERS UNDER FAR PART 4.2101 PROHIBITION ON COVERED TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES AND EQUIPMENT (AUGUST 13, 2020)

(a) This solicitation and any resultant award(s) is subject to the requirements of section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) as implemented through FAR 52.204-24 and FAR 52.204-25 of this solicitation.

(b) Waivers.

(1) The submission of an offer where the Offeror makes a representation at paragraph (d)(2) of the provision at FAR 52.204–24 that it “does” use covered telecommunications equipment or services will mean the Offeror is seeking a waiver.

As part of the disclosure requirements under the provision FAR 52.204–24 submitted as part of the offer, the Offeror/Contractor must describe the circumstances (including in-country circumstances)

where the Offeror/Contractor uses covered technology. This must include an identification of whether the covered technology is provided by communications service-providers, such as internet, cell phone, landline or others; the specific country where it is used; and a description of the presence of any other covered technology, whether it be in any internal systems or elsewhere in the supply chain.

(2) USAID does not guarantee that waiver requests from such an offeror will be considered; USAID may make an award to an offeror that does not require a waiver. Where agency needs do not permit time to obtain a waiver, USAID may move forward and make an award to an offeror that does not require a waiver. Per FAR 4.21, USAID will not make an award to an offeror(s) that does not receive the approved waiver.

(3) Where USAID decides to initiate the formal Agency waiver process:

(i) The CO will require the apparently successful offeror(s) to submit the information in paragraph (4) of this section. Alternately, offerors may provide the information with their initial proposal, at their discretion. Offerors must appropriately mark the appropriate portions of their submission as Proprietary Data where applicable.

(ii) For Indefinite Delivery contracts under (48 CFR) FAR subpart 16.5, waiver requests will be addressed prior to award of the basic contract.

(iii) In the event that the waiver is not approved, the Contracting Officer will notify the offeror.

(4) Additional submission requirements:

(i) A compelling justification for the additional time to implement the requirements under 889(a)(1)(B). The justification must:

- a. State the amount of additional time requested to meet the requirements of the statute (No Agency waiver will be authorized to extend beyond August 13, 2022); and
- b. Provide an explanation supporting the requested time period, to include the time required to implement the Phase out Plan described below.

(ii) A full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the entity's supply chain to include:

- a. Complete technical design documentation of where, how, and what covered equipment or services are being used by the Offeror;
- b. Technical architecture diagram of where the covered technologies are being used (for the system, equipment, service); and
- c. Description of how the covered technologies are being used, how often the covered technology is used by the Offeror, and what data traverses the technology.

(iii) A Phase-Out Plan for eliminating the covered equipment or services from the Offeror's systems, including the covered equipment or services identified in the laydown. The Plan must include:

- a. Description of how the Offeror will eliminate all covered equipment or services by the date specified in (4)(i)(b) above;
- b. When applicable, milestones and timeframes for providing updates to the COR on the Phase-Out Plan implementation;
- c. Identification of other available options;
 - i. Replacement of covered equipment and systems, as applicable;
 - ii. Accessibility of the alternative equipment and systems, as applicable; and
 - iii. In the case of covered services, the proposed use and availability of other service provider(s) without the covered technologies in the supply chain.

(iv) Pending waiver requests/Approved waivers:

- a. Pending - Solicitation Number/title/Issuing Office (Mission or USAID/W) of those offers where the CO has requested the information under this provision.
- b. Approved Waivers - Award number/title/Issuing Office (Mission or USAID/W).

L.3 52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a Cost-Plus-Fixed-Fee (CPFF) Completion contract resulting from this solicitation.

L.4 52.233-2 SERVICE OF PROTEST (SEP 2006)

- (a) *Protests*, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with the agency, and copies of any protests that are filed with the Government Accountability Office (GAO), must be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

Mr. Daniel E. Harter
Supervisory Contracting Officer
USAID/Ukraine
Regional Contracting Office
4 Igor Sikorsky Street
Kyiv, Ukraine 04112

Electronic Address:
Mr. Daniel E. Harter
Supervisory Contracting Officer
E-mail: dharter@usaid.gov

REF: Solicitation No.72012120R00007 USAID/Ukraine “USAID Governance and Local Accountability (HOVERLA) Activity”

- (b) The copy of any protest must be received in the office designated above within one day of filing a protest with the General Counsel’s Office (GAO). A copy of the protest shall be sent to GC/LE, Attn: William Buckhold, Fax number (202) 216-3058.

L.5 GOVERNMENT OBLIGATION

The issuance of this solicitation does not in any way obligate the U.S. Government to award a contract nor does it commit the U.S. Government to pay for costs incurred in the preparation and submission of a proposal. Furthermore, the Government reserves the right to reject any and all offers, if such action is considered to be in the best interest of the Government.

L.6 GENERAL INSTRUCTIONS TO OFFERORS

- (a) **Number of awards:** The U.S. Government anticipates making one (1) award as a result of this solicitation.
- (b) **Responsiveness to Solicitation Instructions:** Proposals must be submitted in accordance with the instructions under Section L. If an Offeror does not follow the instructions set forth herein, its offer may be eliminated from further consideration or the proposal may be downgraded and not receive full or partial credit under the applicable evaluation criteria. If an Offeror does not understand the instructions in this solicitation, then it should write to the Contracting Officer for clarification by the deadline stated on the cover letter of the RFP.
- (c) **Accurate and Complete Information:** Offerors must set forth full, accurate and complete

information as required by this solicitation. The penalty for making false statements to the Government is prescribed in 18 U.S.C. 1001.

- (d) **Pre-award Survey:** USAID reserves the right to perform a pre-award survey which may include, but is not limited to: (1) interviews with key personnel to establish their ability to perform contract duties under the activity conditions; (2) a review of the prime Contractor's financial condition, business and personnel procedures; and (3) site visits to the prime Contractor's institution.
- (e) **Offer Acceptability:** The Government may determine an offer to be unacceptable if the offer does not comply with all of the terms and conditions of the solicitation and prospective contract. The offer must include:
- (1) Completion of Standard Form 33 (SF 33), Blocks 12 through 18;
 - (2) Submission of proposed costs and indirect cost information as required by Section B of this solicitation. In addition, Offerors are required to agree to the Government's estimated cancellation ceiling amount.
 - (3) Completion of the "Representations, Certifications, and Other Statements of Offerors" in Section K. An Offeror and each major named proposed subcontractor may reference its representations, certifications and other statements if they are registered at <https://www.sam.gov>. All Offerors must be registered in the System Award Management (SAM) before award. However, if an Offeror is not registered prior to submission of its proposal, the Offeror and each proposed major subcontractor must complete, sign and date all Representations, Certifications and Acknowledgements as required in Section K.
 - (4) Submission of information required by Section L or any other section of this solicitation. The submission of the items in accordance with the instructions will, if the Government accepts the offer, contractually bind the Government and the successful Offeror to the terms and conditions of the prospective contract. Offerors must follow the instructions contained in this solicitation and deliver all information and signature/certifications, as required.
- (f) **Proposal Preparation Costs:** The U.S. Government will not pay for any costs incurred in the preparation and submission of a proposal.
- (g) **Offer Validity Period:** Proposals shall remain available for acceptance by USAID for a minimum of two hundred and ten (210) days.

Estimated cost Range for this Procurement: The estimated cost range for this procurement is \$22 to \$24 million.

- (h) **Questions and clarifications:** Any questions concerning this RFP must be submitted to morlova@usaid.gov and dharter@usaid.gov. The deadline for receiving questions is indicated on the cover letter of this RFP. Only questions submitted in writing will be considered. No questions will be accepted after the date and time specified in the cover letter. USAID may consolidate and/or not respond to questions/comments. No phone calls will be accepted. Any information given to a prospective Offeror concerning this solicitation will be furnished promptly to all other prospective Offerors, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective Offerors.

All questions/clarifications received by USAID/Ukraine and responses to the questions will be posted at beta.SAM.gov.

L.7 PROPOSAL SUBMISSION

E-Mail is the Exclusive Acceptable Method for Submission of Proposals: The electronic version of the proposals must be sent by internet email, with attachments compatible with Adobe Acrobat

(PDF), Word, and Excel MS Office 2010 in an MS Windows environment. The addresses for receipt of proposals are to morlova@usaid.gov and dharter@usaid.gov. Hand delivered proposals (including commercial courier) and facsimile transmission will not be accepted.

Preparation of E-Mails Containing Offeror Proposals: The Offeror must specify if the attachment to the e-mail contains the technical or cost proposal. If proposals are contained in more than one email, the Offeror should identify through sequential numbering of each part of the technical or cost proposal. Thus, the subject line of each email must contain the following keywords and information:

72012121R00001, [Name of Offeror] Technical Proposal, [Email _ of _]
72012121R00001, [Name of Offeror] Cost Proposal, [Email _ of _]

Delivery Instruction:

- Technical and Cost Proposals must be kept separate from each other. Technical Proposals must not make reference to pricing data in order that the technical evaluation may be made strictly on the basis of technical merit.
- Both the Technical and Cost proposals must be signed by an official who is authorized to negotiate and make decisions on behalf of the organization.
- Alternate Proposals: Alternate proposals will not be accepted.
- The Offeror must submit the proposal via e-mail with up to 20MB limit per email compatible with Microsoft Office (Word, Excel, etc.) and/or WordPerfect in a MS Windows environment.
- Zipped, RAR or compressed files are not accepted;
- The Offeror is reminded that e-mail is NOT instantaneous, in some cases delays of several hours occur from transmission to receipt. For this RFP the initial point of entry to the government infrastructure is USAID's Washington mail server. Offerors are strongly encouraged to review FAR 15.208.
- Offerors are responsible for ensuring timely delivery of the proposals and are encouraged to request a return receipt upon delivering their proposals;
- If the Offeror's organization decides to submit a proposal in response to this solicitation, it must be submitted in accordance with Section L of the RFP.

Closing Date and Time: No proposals will be accepted after the time and date stated on the cover letter of this RFP. Receipt by any one addressee below in accordance with the deadline, will constitute timely receipt for this RFP. You will receive a confirmation from USAID via e-mail.

L.8 INSTRUCTIONS FOR THE PREPARATION OF THE TECHNICAL PROPOSAL, VOLUME I

A. Organization of the Technical Proposal

The Technical Proposal in response to this solicitation must address how the Offeror intends to carry out the Statement of Work contained in Section C of this RFP. It must also contain a clear understanding of the work to be undertaken and the responsibilities of all parties involved. The technical proposal must be organized by the technical evaluation criteria listed in Section M. The technical proposal should offer original, critical thinking and analysis related to each component; and should tie the technical approach to interventions and results to be achieved. It should present a convincing and compelling articulation of an Offeror's vision of the activity implementation and demonstrate why it is the most effective way to achieve objectives, including a reasonable course of action and tasks relevant to the current needs of Ukraine and geographical focus areas.

The Technical Proposal is limited to fifty (50) pages including Annexes. The Technical Proposal must be written in English using Times New Roman font, point 12 size or more with one-inch margins all around, typed on standard 8.5 inch by 11 inch (210 mm by 297 mm) paper, single-spaced. Each page must be numbered consecutively. Those pages that exceed the page limitation

will not be evaluated. Non-conforming proposals will be converted to a document meeting the above requirements and pages above the limit, if any, will not be evaluated. Any page in the technical proposal that contains a table, chart, graph, etc., is subject to the page limitation. The Technical Proposal must be submitted in the format stated above.

B. Content of Technical Proposal

The technical proposal should, at a minimum, include the following:

- Cover Page
- Table of Contents
- Acronym List
- Technical Approach
- Management Approach
- Collaboration, Learning and Adapting (CLA)
- Past Performance
- Annexes

1) Cover Page

The cover page must include the name of the organization submitting the proposal and the organization's DUNS number. Major subcontractors must be clearly identified, along with their DUNS numbers (major subcontractors are defined as those whose proposed cost exceeds 20% of the Offeror's total proposed cost). The contact person/authorized representative to be contacted both during the period of evaluation of proposals and for negotiations leading to award. This information is to include the individual's name, title or position with the organization; address; telephone; and e-mail address. The cover page must be signed by the authorized representative and is included in the 50-page limitation.

2) Table of Contents

The table of contents should include page number references and is included in the 50-page limitation.

3) Acronym List

The Offeror must include a list of acronyms used in its proposal and is included in the 50-page limitation.

4) Technical Approach

The technical proposal must provide a full description of the Offeror's proposed approach to achieve the objectives and sub-objectives described in the Statement of Work (Section C) throughout the life of the five-year activity. The Offeror must clearly explain how the proposed approach will advance justice for all Ukrainians by strengthening justice systems, services, and societal engagement to deliver responsive solutions to Ukrainians' legal problems and justice needs. This includes a description of how the Offeror will engage with and respond quickly to the needs of USAID and the key local partners defined under each objective. The technical proposal must address how the Offeror will align its interventions with the principles described in Section C.6 Technical Approach; in particular, how the Contractor will advance Ukraine's self-reliance by building the commitment and capacity of the government and other justice system stakeholders to lead judicial reform and deliver people-centered justice to achieve J4A objectives. The technical approach must also include a draft Initial Implementation Plan (Year 1 Work Plan; Annex 1), that show proposed year one activities (i.e., Gantt chart) to be accomplished under each objective detailed by month.

5) Management Approach

The Offeror must:

- Describe how the approach will achieve and sustain activity objectives and results and ensure effective engagement with the range of local partners defined in Section C; and
- Describe how proposed staff, subcontractors/partners, and illustrative STTA are relevant and necessary for effective implementation; will contribute to achieving results; and will be managed in an effective way.

The overall description must specify the nature of organizational linkages between the prime contractor and any subcontractor, joint venture, or consortium entities; lines of authority and accountability; and plans for sharing resources and/or achieving cost savings. If Offerors intend to develop institutional partnerships, teaming arrangements, and/or engage subcontractors in the implementation of the contract, the proposal shall identify and describe the roles and responsibilities of such local, regional, and/or international organizations. Exclusive relationships with local partners are discouraged. The proposal must include a graphical depiction of the roles of proposed primes, major subcontractors, and/or other consortium members in program implementation. Offerors should explain the role of the home office in the implementation of the project and include lines of authority and decision-making. Internal financial and management controls should also be discussed to assure USAID that the Offeror, its subcontractors, and sub-grantees will manage U.S. taxpayers' money with accountability.

The management approach shall include a proposed staffing plan, which should relate directly to the approaches, strategies, and interventions proposed for achieving Activity results. Short-term technical assistance and home office institutional support requirements should be described as well as administrative positions in order to demonstrate the administrative capacity to manage this project effectively. The staffing plan shall clearly list proposed personnel by position title, employment categories (USN, TCN or CCN), as well as these individuals' anticipated contributions to project efforts. Ukrainian staff, advisors, sub-contractors and grantees should be provided prominent roles in the Activity and offered capacity building to assume greater responsibility and deliver higher-level results. **Note:** Offerors are not required to name Ukrainian long-term staff, other than key personnel, or provide CVs thereto, but should include in the staffing plan the desired complement of local personnel, including position titles, desired qualifications, and how their inclusion would best achieve the results of this project. The proposal must include an organizational chart (as an Annex) that illustrates the roles of the proposed staff.

Key Personnel: The Contractor shall propose two key personnel necessary to obtain the results set out in the Statement of Work: (1) the Chief of Party (COP); and (2) the Deputy Chief of Party (DCOP). The proposal must demonstrate the qualifications and professional experience of key personnel (as stated in Section F) and their experience in effectively managing technical assistance in development of a people-centered justice system and the promotion of the rule of law. Each résumé must show how the candidate being proposed meets the qualifications and the Activity's expectations. This includes clearly delineating the month and year of employment highlighted in the resume, so that the candidate's years of experience can be clearly determined or calculated. **When it comes to demonstrating years of experience in a resume, it cannot be stressed enough that Offerors should NOT make it USAID's responsibility to make assumptions or calculations to determine years of experience.** Offerors must include at least 3 Reference Contacts for Key Personnel at the end of the résumés. USAID expects that all Offerors will have equal access to all local personnel needed for this contract. Unless and until an Offeror has been awarded a contract and can knowingly provide employment, USAID strongly discourages the use of **exclusivity agreements with personnel and/or sub-partners.** *Key Personnel and Qualifications are presented in Section F.6 of this RFP.*

Other Professional (Non-Key) Personnel: Offerors may identify non-key personnel and consultants in their applications with the expertise to achieve the objectives of the Activity. This expertise could be in the following areas, among others: justice sector and rule of law, delivery of key sector-specific

services, legislative analysis/drafting, research/data collection, monitoring and evaluation, gender and inclusion, finance and operations staff, as well as communications and grants/subcontracting as appropriate. USAID strongly encourages Offerors to draw from Ukraine's talented pool of expert development professionals, and to ensure diversity and gender balance when forming its team. Professional personnel, for purposes of this contract, are defined as technical specialists in the disciplines needed to achieve the results set forth in Section C, Statement of Work (SOW).

Short-term Consultants: Short-term consultants will provide the necessary expertise to implement their proposed approach in support of the overall objectives of the USAID Justice for All (J4A) Activity. Short-term consultants should be recognized experts.

6) Collaboration, Learning and Adapting (CLA)

The Offeror must:

- Describe how it will coordinate and collaborate with USAID staff, GOU stakeholders/initiatives, other USAID and Embassy programs, donor programs, and other stakeholders. Coordination with other USAID sectoral reform efforts is critical for this activity.
- Describe the Offeror's approach to adapting to a dynamic context with significant political, institutional, and security constraints, as well as fluid reform priorities. The Offeror must also describe its approach to adapting to these dynamics while ensuring that the objectives of the Activity are met.
- Provide a draft MELP describing the Offeror's approach to monitoring, evaluating and managing performance, establishing specific, adequate, and measurable illustrative output, outcome, and impact indicators to measure progress towards contract objectives; and using new and/or innovative methodologies or approaches for measuring capacity improvements of beneficiaries at the local level, learning from research/surveys, and adapting program activities based on MEL results.

7) Contractor Past Performance Information

(a) The Offeror (including all partners of a joint venture) must provide performance information for itself and each major subcontractor (one whose proposed cost exceeds 20% of the Offeror's total proposed cost) in accordance with the following. Attachment J.3 - Contractor Performance Report – Short Form may be used by Offerors to present the information requested below.

1. List in an annex to the technical proposal up to five of the most recent (within the past three years) and relevant contracts for the Offeror and up to five of the most recent and relevant contracts for each major subcontractor for efforts similar to the work in the subject proposal. The most relevant indicators of performance are contracts of similar size (between \$15 million and \$40 million), type of work identified in SOW (complex justice sector reform challenges, anti-corruption, democracy, human rights and governance across justice sector reform programs), and complexity/diversity of tasks and how recently they were performed. It should be clear whether the work by the Offeror was done as a prime Contractor or as a subcontractor.
2. Provide for each of the contracts listed above a list of contact names, job titles, mailing addresses, phone numbers, e-mail addresses, and a description of the performance to include:
 - Scope of work or complexity/diversity of tasks,
 - Primary location(s) of work,
 - Term of performance,
 - Skills/expertise required,
 - Dollar value, and
 - Contract type, i.e., fixed-price, cost reimbursement, etc.

(USAID highly recommends that you alert the contacts that their names have been submitted and that they are authorized to provide performance information concerning the listed contracts if and when USAID requests it.)

(b) If extraordinary problems impacted any of the referenced contracts, provide a short explanation and the corrective action taken (FAR 15.305(a)(2)).

(c) Describe any quality awards or certifications that indicate exceptional capacity to provide the service or product described in the statement of work.

(d) Performance in Using Small Business (SB) Concerns (as defined in FAR 19.001)*.

(1) This section (d) is not applicable to offers from small business concerns.

(2) As part of the evaluation of performance in Section M.3 of this solicitation, USAID will evaluate the extent you used and promoted the use of small business concerns under current and prior contracts. The evaluation will assess the extent small business concerns participated in these contracts relative to the size/value of the contracts, the complexity and variety of the work small business concerns performed, and compliance with your SB subcontracting plan or other similar small business incentive programs set out in your contract(s).

(3) In order for USAID to fully and fairly evaluate performance in this area, all Offerors who are not small business concerns must do the following:

(A) Provide a narrative summary of your organization's use of small business concerns over the past three years. Describe how you actually use small businesses--as subcontractors, as joint venture partners, through other teaming arrangements, etc. Explain the nature of the work small businesses performed-- substantive technical professional services, administrative support, logistics support, etc. Describe the extent of your compliance with your SB subcontracting plan(s) or other similar SB incentive programs set out in your contract(s) and explain any mitigating circumstances if goals were not achieved.

(B) To supplement the narrative summary in (A), provide with your summary a copy of the 10 most recent SF 294 "Subcontracting Report for Individual Contracts" against which you were required to report for the past 3 years. SF 294 should be submitted as part of the Cost Proposal.

(C) Provide the names and addresses of three SB concerns for us to contact for their assessment of your performance in using SB concerns. Provide a brief summary of the type of work each SB concern provided to your organization, and the name of a contact person, his/her title, phone number, and e-mail address for each.

8) Annexes to Technical Proposal

The following Annexes could be included as a part of Technical Proposal and should be **within the 50 page limitation**:

Annex 1: Preliminary Year 1 Initial Implementation Plan including a Gantt Chart or other graphic timeline of major activities.

Annex 2: Illustrative (draft) Monitoring, Evaluation and Learning Plan (MELP). The MELP should explain how the Offeror proposes to monitor the program and assess performance and progress toward achieving program results. The Offeror shall draft an illustrative MELP using the guidelines set forth in Section F.4.A.), *Monitoring, Evaluation and Learning Plan (MELP)*, of this RFP.

- Annex 3: Resumes for Key Personnel. Please include at least 3 Reference Contacts for Key Personnel at the end of the résumés for key personnel.
- Annex 4: Prime Offeror's and Offeror's Major Sub-Contractors' past performance information relevant to the justice sector and rule of law from the past three years. The information must include the award number, title of projects, and DUNS. Contractor Performance Report – Short Form (Attachment J.3 of this RFP) may be used by Offerors to present past performance information. Using the past performance information provided by the Contractor, USAID will evaluate Contractor's past performance using information in Contractor Performance Assessment Reporting System (CPARS) obtained from Past Performance Information Retrieval System (PPIRS).
- Annex 5: Organizational Chart that illustrates the roles of the proposed staff in program implementation.

INSTRUCTIONS FOR THE PREPARATION OF BRANDING IMPLEMENTATION AND MARKING PLAN (PART OF COST PROPOSAL)

Branding Implementation Plan and Marking Plan must meet the requirements of ADS 320.

The Offerors must submit a draft Branding Implementation Plan (for contracts) (BIP) and a draft Marking Plan (for both contracts and assistance awards) responsive to the Branding Strategy provided in Section D.2, of the RFP and USAID policies, as an annex to the cost proposal. While the draft Branding Implementation Plan or Branding Strategy and the draft Marking Plan will not be evaluated as part of the best value decision, the successful Offeror's Branding Implementation Plan or Branding Strategy and Marking Plan will be finalized in coordination with USAID and included in the award. The BIP will be negotiated within the time that the Contracting Officer specifies. Failure to submit and negotiate a BIP will make the Offeror ineligible for award of a contract. The cost proposal must include all estimated costs associated with the Branding Implementation Plan and the Marking Plan.

In preparation of the branding implementation plan and the marking plan the Offeror will use templates at <http://www.usaid.gov/branding>.

The cost application must incorporate the estimated cost of the proposed Branding Implementation or Branding Strategy and Marking Plan.

These plans shall detail implementation of the branding strategy (in the branding implementation plan), specify how the project will be marked (in the marking plan), as well as include a proposed budget for outreach and indicate who will be responsible for the implementation of these plans.

The Draft Branding Implementation Plan must specifically address the following:

- How to incorporate the message, "This assistance is from the American People," in communications and materials directed to beneficiaries, or provide an explanation if this message is not appropriate or possible.
- How to publicize the program, project, or activity in the host-country and a description of the communications tools to be used. Such tools may include the following:
 - Press releases,
 - Press conferences,
 - Media interviews,
 - Site visits,
 - Success stories,
 - Beneficiary testimonials,

- Professional photography,
 - PSAs,
 - Videos,
- Webcasts, e-invitations, or other emails sent to group lists, such as participants for a training session blast e-mails or other Internet activities, etc.

The key milestones or opportunities anticipated to generate awareness that the program, project, or activity is from the American people, or an explanation if this is not appropriate or possible. Such milestones may be linked to specific points in time, such as the beginning or end of a program, or to an opportunity to showcase publications or other materials, research findings, or program success. These include, but are not limited to, the following:

- Launching the program,
- Announcing research findings,
- Publishing reports or studies,
- Spotlighting trends,
- Highlighting success stories,
- Featuring beneficiaries as spokespeople,
- Showcasing before-and-after photographs,
- Marketing agricultural products or locally-produced crafts or goods,
- Securing endorsements from ministry or local organizations, and
- Promoting final or interim reports.

The Draft Marking Plan must enumerate the public communications, commodities, and program materials and other items that visibly bear or will be marked with the USAID Identity. USAID's policy is that programs, projects, activities, public communications, or commodities implemented or delivered under contracts and subcontracts exclusively funded by USAID are marked exclusively with the USAID Identity. Where applicable, a host-country symbol or ministry logo, or another U.S. Government logo may be added.

Commodities or equipment provided under this Order must prominently display the USAID Identity. Program, project, or activity sites financed by USAID contracts, including visible infrastructure projects (roads, bridges, buildings, etc.) or others that are physical in nature (agriculture, forestry, water management, etc.), must prominently display the USAID Identity. Temporary signs must be erected early in the construction or implementation phase. When construction or implementation is complete, the contractor must install a permanent, durable and visible sign, plaque, or other marking. Public communications financed by USAID contracts that are print products must prominently display the USAID Identity. These communications include, but are not limited to, the following:

- Publications;
- Reports;
- Research results, studies, and evaluations;
- Brochures, leaflets, informational, and promotional materials;
- Folders;
- Success stories;
- Posters;
- Banners and Signs;
- Print PSAs, newspaper supplements and other paid placements such as advertorials;
- (Non-administrative) advertisements about program events/activities;
- Training manuals, workbooks, and guides;
- Press releases, fact sheets, media advisories (note: the U.S. Ambassador or Public Affairs Officer may request these materials to be distributed on U.S. Embassy letterhead); and
- Letterhead used for program-related purposes (invitations to events, etc.), as opposed to Contractor administrative purposes.

Public communications financed by USAID contracts that are audio, visual, or electronic must prominently display the USAID Identity. Such communications include, but are not limited to, the following:

- Web sites;
- Videos;
- CDs and DVDs;
- TV PSAs;
- PowerPoint and other program-related presentations;
- Mass distribution electronic mail sent for program purposes, such as invitations to training events or other widely attended program-related gatherings; and
- Radio PSAs, which must include an audio tag, such as, “made possible by USAID: From the American people.”

Studies, reports, publications, Web sites, and all informational and promotional products not authored, reviewed, or edited by USAID must contain a provision substantially as follows:

“This study/report/Website (specify) is made possible by the support of the American People through the United States Agency for International Development (USAID.) The contents of this (specify) are the sole responsibility of (name of organization) and do not necessarily reflect the views of USAID or the United States Government.”

Events financed by USAID contracts must prominently display the USAID Identity. Such events include, but are not limited to, the following:

- Training courses;
- Conferences;
- Seminars;
- Briefings;
- Exhibitions;
- Fairs;
- Workshops;
- Press conferences;
- Other public meetings and activities; and
- Invitations, press releases, publicity, and media materials, presentations and handouts associated with these events that are produced under a USAID direct contract.

USAID reserves the right to request preproduction review of USAID-funded public communications and program materials for compliance with **USAID Graphic Standards Manual** and the approved Marking Plan.

Offerors should note that additional guidance on the preparation of the Branding Implementation Plan and Marking Plan is available at <http://www.usaid.gov/branding>. The cost proposal must incorporate the estimated cost of implementing the proposed Branding Implementation Plan and Marking Plan.

The Contractor’s Branding Implementation and Marking Plans should demonstrate the Contractor understanding and support of ADS 320.

Offeror(s) should submit a preliminary BIP and MP as a separate annex to the Cost Proposal. The BIP and MP will not be a part of the technical evaluation. Offerors will be required to submit

formal and detailed Branding Implementation Plan and Marking Plan for final review before award, or in the competitive range.

L.9 INSTRUCTION FOR THE PREPARATION OF THE COST PROPOSAL, VOLUME II

The cost proposal must include all costs necessary to implement the strategy and activities described in the Offeror's technical proposal. This includes, but is not limited to, costs related to implementation and validation of activities, geographic and demographic data collection and reporting, environmental mitigation, branding and marking, monitoring and evaluation, etc.

Offerors must submit a cost proposal which will be reviewed as part of the overall evaluation as indicated in Section M. Each Offeror's cost proposal for the contract period will be evaluated in terms of reasonableness and realism to determine the appropriateness of cost for the proposed work, the Offeror's understanding of the work, and their ability to perform the work.

For purposes of responding to this solicitation the following definitions and instructions will apply.

(a) Definitions:

- **Detailed Budget Worksheets:** Detailed Budget Worksheets contain the greatest level of detailed budget breakdown. In the Detailed Budget Worksheets provide details of every estimated item of cost that make up the Cost Elements.
- **Summary Worksheets:** Summary Worksheets derive data from the detailed budget worksheets and summarize the information. Consolidated Data are figures that appear within a cell because they have been calculated as the result of a formula, and *not* because they have been manually entered into the cell.

For both Detailed Budget Worksheets and Summary Worksheets, the cells that contain budget figures should be formatted as Numbers or Currency, with no decimal places, and with comma separators.

- **Budget Narrative** - Offerors must submit a detailed budget narrative that supports the cost estimates proposed in its detailed budget. The budget narrative will describe the nature of individual cost items proposed and include a description of the source of that particular cost estimate (historical experience, market survey, vendor quotes, etc.). Narratives for the individual cost items must provide a discussion of any estimated escalation rates where applicable. Estimated costs proposed to exceed ceilings imposed by USAID or Federal procurement policy must be fully explained and justified.

(b) Instructions:

1. The cost proposal must be submitted under separate volume from the technical proposal. There is no page limit on the COST/BUSINESS PROPOSAL. The following should be included:
 - The Standard Form (SF) 33;
 - Proposed Costs/Prices for the 5-year contract period and Cost Proposal Narrative;
 - Representations, Certifications, Other Statements of Offerors (if amended)
 - Policies and Procedures;
 - Evidence of Responsibility for prime and major subcontractors;
 - Letter of Commitment for Subcontractors;
 - Information to Support Consent to Subcontractors (if CO consent is required); and
 - Joint Venture Information (if applicable)

- Biographical Data sheets and justification in support of proposed salary rates for key personnel and other named personnel;
 - Information Concerning Work-Day, Work-Week and Paid Absences;
 - SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES;
 - Other information related to Cost Proposal (e.g. NICRA, etc.).
 - Environmental Compliance: Offerors should describe their approach to environmental compliance and management, including developing and implementing 22 CFR 216 documentation. Environmental compliance will not be evaluated as a part of evaluation process but will be reviewed for appropriateness.
 - Branding Implementation Plan and Marking Plan.
 - SF 294 “Subcontracting Report for Individual Contracts” (no page limit)
2. Proposed subcontracts must include the same cost breakdowns in their proposals and budget narratives as the prime contractor, as applicable.
 3. Budget for all proposed costs must be submitted in **Microsoft Excel** format. The Offeror must use the illustrative budget format contained in Attachment J.4 “SUMMARY BUDGET FORMAT.” **The Supportive narrative should be in Word or PDF.**

Part 1 - Standard Form 33

The Offeror must submit the cover page (Section A) of this solicitation—Standard Form (SF) 33, “Solicitation, Offer, and Award”—with blocks 12 through 18 completed, including an original signature of a corporate authority authorized on behalf of the Offeror to sign the offer.

Part 2 - Proposed Costs/Price and Cost Proposal Narrative

The Offeror must submit a summary budget for the contract period of 5-years.

The summary budget must reflect summary cost information for each of the major budget categories for each of the contract years separately and then offer the program total for the entire contract, item for item in the last column of the spreadsheet.

The Offeror must also submit a detailed version of its summary budget for the contract period. The detailed budget must reflect each estimated cost item, broken out. The detailed budget must reflect these individual cost items for each of the contract years and then offer the program total for the entire contract, item for item in the last column of the spreadsheet.

The Offeror must submit a detailed budget narrative that supports item for item the cost estimates proposed in its detailed budget. The budget narrative should describe the nature of individual cost items proposed and include a description of the source of that particular cost estimate (historical experience with the cost item, catalogue price, vendor price quotes, etc.). Narratives for the individual cost items must provide a discussion of any estimated escalation rates where applicable. Estimated costs proposed to exceed ceilings imposed by USAID or Federal procurement policy must be fully explained and justified.

The following is the minimum information required in the budget and budget narrative:

(A) Salary and Wages

FAR 31.205-6, AIDAR 732.203-46 AND AIDAR 452.7007 provide for compensation for personal services. Salaries for each proposed position, key or not, should be expressed in an amount per work day with the corresponding level of effort required for the position (number of work days) and then calculated to a total cost for each cost period where the salary would be applicable.

Salary and wages should be proposed in accordance with the Offeror's personnel policies and must meet the regulatory requirements. Costs of long-term and short-term personnel should be broken down by person years, months, days or hours.

- Completed biographical data sheets, Form AID 1420-17 (forms may be obtained at: <http://www.usaid.gov/forms/>), must be provided for proposed key personnel and other named professional staff/personnel. Bio-data forms must be properly completed, certified and signed by both employee and the Offeror in the appropriate spaces with all blocks completed, as appropriate. Personnel, whose proposed salaries are in currency other than the U.S. dollars, must show the contemporaneous U.S. dollar equivalent. Proposed annual salary escalation must be provided. **Offerors must provide justification for the proposed salary/rate.**
- Narratives must provide a discussion of the estimated annual escalation of all salaries where applicable. The Offeror must separate expatriate and cooperating country national labor categories for short/long-term and administrative staff.
- Offeror's should provide information supporting local professional salaries that should include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.
- Salaries and wages must be based on the requirements of the positions proposed and NOT on the proposed individual's' salary histories. A daily rate for each proposed position, the work days required for the position and then the corresponding total salary per year. Direct salaries and wages for long-term and short-term expatriate staff as well as home office support staff must not exceed Contractor Salary Threshold (CST) in the amount of \$183,300/year (\$705.00/day).
- Salaries for long-term and short term CCN staff must not exceed a threshold as specified in Local Compensation Plan (LCP) in the amount of \$68,966/year (\$265.25/day).

(B) Fringe Benefits

FAR 31.205-6 provides for allowances and services provided by the Offeror to its employees as compensation in addition to regular wages and salaries. If the Offeror has a fringe benefit rate that has been approved by an agency of the Government, such rate should be used and evidence of its approval should be provided. If a fringe benefit rate has not been approved, the application should propose a rate and explain how the rate was determined. If the latter is used, the narrative should include a detailed breakdown comprised of all items of fringe benefits (e.g., unemployment insurance, workers compensation, health and life insurance, retirement, FICA, etc.) and the costs of each, expressed in dollars and as a percentage of salaries.

Fringe Benefits for local long-term staff must be budgeted as a separate item of cost and include only the social contributions (excluding income tax) in accordance with Ukrainian labor law.

(C) Allowances

AIDAR 752.7028 provides for differentials and allowances with further references to Standardized Regulations.

Allowances should be broken down by specific type and by person. Allowances should be in accordance with the Offeror's policies and the applicable Department of State Standardized Regulations.

****All Offerors must note very carefully:**

In accordance with AIDAR 722.170 "Employment of Third Country Nationals (TCNs) and Cooperating Country Nationals (CCNs) "Paragraph "(a) General", the following restrictions are placed on employment benefits to TCNs and CCNs employed under the contract:

Meals and Transportation Allowance: Unallowable cost.

Severance Pay: An eligible employee with a minimum of two years of creditable service who is involuntarily separated without cause is entitled to severance pay equal to 1/3 month's basic salary for each year of creditable service. Any cost above this is unallowable.

Personal Income Tax: must be included and not added to the base pay or salary of local staff.

(D) Consultants

FAR 31.205-33 provides for services rendered by a person who is member of a particular profession or possess a special skill and who is not an officer or an employee of the Offeror.

Similar information should be provided for all consultants as provided under the category for salary and wages.

Consultants are not treated as employees and do not receive fringe benefits.

(E) Travel, Transportation and Per Diem

FAR 31.205-46, AIDAR 731.205-46 and AIDAR 752-7032 provide costs for transportation, lodging, meals and incidental expense. The proposal must indicate the number of trips, domestic and international, and the estimated costs per trip. Specify the origin and destination for each proposed trip, duration of travel, and number of individuals traveling (if identified). Per diem should be based on the Department of State Standardized Regulations. Offeror's must review all regulations related to travel and base its estimates on current regulations.

(F) Equipment and Supplies

FAR 2.101 provides for supplies as all property except land or interest in land, FAR 31.205-26 provides for material costs, and FAR 45 prescribes policies and procedures for providing Government property to contractors, contractors' use and management of Government property, and reporting, redistributing, and disposing of contractor inventory.

Specify all other equipment, materials and supplies expected to be purchased, including type, unit cost and number, manufacturer and the anticipated geographic source. For budgeting purposes, the assumption is that no equipment or any government property will be furnished to the Contractor. Therefore, Offerors must budget for all needed equipment, furniture, and supplies to implement this program. The Offeror must submit a list of proposed non-expendable property purchases. Specify all equipment to be purchased, including the type of equipment, the unit cost, the number of units to be purchased and the expected geographic source. Goods and services provided by the Offerors under this USAID-financed award will be subject to the Geographic Code 110 and 937.

(G) Communications

Specific information regarding the type of communication cost at issue (i.e. mail, telephone, cellular phones, internet etc.) must be included in order to allow an assessment of the realism and reasonableness of these costs.

(H) Training

Specify all training expected to be funded. Avoid lump sum amounts to the maximum extent possible.

(I) Subcontracts

FAR 44.101 provides for any contract entered into by a subcontractor to furnish supplies or services for performance of a prime Offeror or a subcontractor. Information sufficient to determine the reasonableness of the cost/price of each specific subcontract must be provided for all subcontractors.

Proposed subcontracts must include the same cost breakdowns in their proposals and budget narratives as the prime contractor, as applicable.

(J) Grants Under Contract

USAID anticipated approximately \$5M of the program budget for the Grants under Contract. USAID is not expecting detailed budget breakdowns. USAID will accept lump-sum amounts, at least indicating the estimated number of grants per year and total estimated amount for each grant. Narrative information supporting how those funds will be distributed among an illustrative group of grantees, if proposed. Offerors must not include indirect costs or other management costs (salaries etc.) associated with the Grants Fund under this cost category.

(K) Environmental Compliance Costs

Under this separate cost category the Offeror must indicate its illustrative budget for implementing the environmental compliance activities. For the purposes of this solicitation, Offerors should reflect illustrative costs for environmental compliance implementation and monitoring in their cost proposal.

(L) Other Direct Costs

FAR 31.202 and FAR 31.205 provides for the allowability of direct costs and many cost elements. This includes, report preparation costs, passports and visas fees, medical exams and inoculations, insurance (other than insurance included in the Offeror's fringe benefits), branding costs, as well as any other miscellaneous costs, which directly benefit the project proposed by the Offeror. The narrative must provide a breakdown and justification for all ODCs. The Offeror must not include the cost of non-professional salaries or locally employed salaries, allowances, equipment, and travel costs under the ODC cost category.

This shall include unit cost (e.g. monthly) , number of units for applicable costs such as office rent, vehicle fuel and maintenance, generator fuel, report preparation costs, promotional events, communication costs, workshops as well as any other miscellaneous costs, which directly benefit the program proposed by the Offeror. The narrative will provide a breakdown and support for all other direct costs. If workshops are included, the Offeror must indicate the subject, venue and duration of proposed workshop, and their relationship to the objectives of the program, along with estimates of costs. Specific information regarding the type of communication cost (i.e. mail, telephone, cellular phones, internet etc.) must be included in order to allow an assessment of the realism and reasonableness of these types of costs.

If trainings, workshops, studies, etc., are included, the Offeror must indicate the subject, venue and duration of proposed such activities, and their relationship to the objectives of the activity, along with estimates of costs. In addition, information regarding the type of communication cost (i.e. mail, telephone, cellular phones, internet etc.) must be included in order to allow an assessment of the realism and reasonableness of these types of costs.

Costs of Branding and Marking (ADS 320.3.6.3) must be included under this line item. These costs are eligible for financing if reasonable, allocable, and allowable in accordance with the applicable cost principles.

Defense Base Act (DBA) insurance. The Offeror must apply the current DBA insurance rate to the salaries and post differential of Expatriate/TCN and Home-Office personnel while in the field. The

Contractor shall not budget DBA insurance for local personnel, as Ukraine is included in the DBA waiver list, so DBA insurance is not required (please refer to Section H. 6 of this RFP).

(M) Indirect Costs (Overhead, G&A and Material Overhead)

FAR 31.203 and FAR 42.700 provides for those remaining costs (indirect) that are to be allocated to intermediate or two or more final cost objectives.

(i) The Offeror must include a complete copy of its and each proposed major subcontractor's most current Negotiated Indirect Cost Rate Agreement (NICRA) or other documentation from its cognizant Government Audit Agency, if any, stating the most recent indirect cost rates. The proposal must also include the name and address of the Government Audit Agency, and the name and telephone number of the auditor.

(ii) If the Offeror or any major subcontractor does not have a Negotiated Indirect Cost Rate Agreement with any U.S. Government Federal Agency, the proposal must include the following in support of the proposed indirect cost rates:

(a) Audited balance sheets and profit and loss statements for the last two years, and the current year-to-date statements (or such lesser period of time if the Offeror is a newly formed organization), must be included in the proposal. The profit and loss statements will include details of the total cost of goods and services sold, including a listing of the various indirect administrative costs, and be supplemented by information on the prime Offeror's customary indirect cost allocation method, together with supporting computations of the basis for the indirect cost rate(s) proposed; and

(b) The most recent two fiscal years' pool and base cost compositions along with derived rates, the bases of allocation of these rates and an independent certified audit by a certified accounting firm of these rates.

The Offeror should support the proposed indirect cost rate with a letter from a cognizant U.S. Government audit agency or with sufficient information for USAID to determine the reasonableness of the rates. (For example, a breakdown of labor bases and overhead pools, the method of determining the rate, a description of all costs in the pools, etc.). The Offerors are requested to include the ceiling indirect cost rates for Prime and Major Subcontractors.

Indirect Cost Information:

(i) The Offeror and each proposed major subcontractor must include a complete copy of its most current Negotiated Indirect Cost Rate Agreement (NICRA) or other documentation from its cognizant Government Audit Agency, if any, stating the most recent final indirect cost rates.

(ii) If the Offeror or any major subcontractor(s) does not have a cognizant Government Audit Agency, audited balance sheets and profit and loss statements for the last two complete years, and the current year- to-date statements (or such lesser period of time if the Offeror is a newly-formed organization), must be included in the proposal. The profit and loss statements should include detail of the total cost of goods and services sold, including a listing of the various indirect administrative costs, and are supplemented by information on the prime contractor's customary indirect cost allocation method, together with supporting computations of the basis for the indirect cost rate(s) proposed.

(N) Fixed Fee (if any)

FAR 15.404-4 provides for establishing the profit or fee portion of the Government pre-negotiation objective, and provides profit-analysis factors for analyzing profit or fee.

USAID would appreciate it if Offerors submit breakouts or supporting rationale for its profit or fee objective. This is not a "must."

In the determination for a reasonable fee, the following factors may be considered: technical, management, support for Federal socioeconomic programs, and cost control. The Offeror must provide rationale supporting profit analysis factors.

Part 3 – Additional Information

The cost proposal must also include the following:

- (1) Salary ranges for all professional staff.
- (2) Pay Scale for short term consultants with the proposed level of expertise required for the position.

Representations, Certifications, and Other Statements of Offerors

Offerors and proposed major subcontractors must ensure they are registered with the System for Award Management (SAM) (www.sam.gov) per FAR part 4. A successful registration in SAM means the Offeror has obtained a DUNS number, has registered in CCR (Central Contractor Registration) and has secured an NCAGE number to successfully complete the Online Representation & Certifications Application (ORCA).

The Offeror and each proposed major subcontractor must complete Section K “Representations, Certifications, and Other Statements of Offeror,” and sign and date on the last page in the space provided and submit as an Annex to the cost proposal. The submission of these items in accordance with these instructions will, if the Government accepts the offer, contractually bind the Government and the successful Offeror to the terms and conditions of the prospective contract (i.e., sections A through K).

The Offeror must submit as part of its proposal a statement that the Offeror has registered in SAM – System for Award Management (<https://www.sam.gov/>).

Policies and Procedures

Upon receiving a specific request from the Contracting Officer, the Offeror may be required to submit a copy of Offeror’s personnel policies, especially regarding salary and wage scales, fringe benefit, merit increases, promotions, leave, differentials, travel and per diem, procurement regulations, etc., as they will relate to this project.

Evidence of Responsibility for Prime and Major Subcontractor

The Offeror must submit sufficient evidence of responsibility for the Contracting Officer to make an affirmative determination of responsibility pursuant to the requirements of FAR § 9.104-1. However, in the case of a small business Offeror, the contracting officer will comply with FAR Subpart 19.6. Accordingly, prime Offerors must seriously address each element of responsibility. To be determined responsible, a prospective contractor must:

- (a) Have adequate financial resources to perform the contract, or the ability to obtain them (see FAR 9.104-3(a));
 - Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental commitments;
 - Have a satisfactory performance record (See FAR 9.104-3(b) and Subpart 42.15). An Offeror must not be determined responsible or non-responsible solely on the basis of a lack of relevant performance history, except as provided in FAR 9.104-2;
 - Have a satisfactory record of integrity and business ethics;

- Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective Contractor and subcontractors). (See FAR 9.104-3(a));
- Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them (See FAR 9.104- 3(a)); and
- Be otherwise qualified and eligible to receive an award under applicable laws and regulations (e.g., Equal Opportunity, Clean Air and Water, Small Business Subcontracting, etc.).

The responsibility information that may be requested includes, but is not limited to, audited or certified financial statements, tax returns and other financial records necessary to establish responsibility. **Please note that this information is only required upon a specific request from the contracting officer or his representative.**

Letters of Commitment (Subcontractors)

- (a) The Cost Proposal must include a letter, on subcontractor letterhead, and signed by an authorized representative of each subcontractor, which specifically indicates the subcontractor's agreement to be included in the Offeror's proposed teaming arrangement. The representations and certifications, as set forth in Section K of this solicitation, with the last page signed. This should be completed by any major subcontractors as well.

Information to Support Consent to Subcontractors

- (a) The Offeror must address each of the elements in FAR § 44.202-2 before the contracting officer may consent to the Offeror's proposed subcontractors with the initial award.

Joint Venture

If two or more parties have formed a partnership or joint venture (see FAR Subpart 9.6), for the purposes of submitting a proposal under this Solicitation and, if selected, must perform the contract as a single entity, they must submit, as an attachment to the Cost proposal, the Corporate Charter, By-Laws, or Joint Venture or Partnership Agreement. In addition, the teaming arrangements must be identified, company relationships must be fully disclosed and respective responsibilities and method of work must be expressly stipulated. The joint venture or partnership agreement must include a full discussion of the relationship between the organizations, including identification of the organization, which will have responsibility for negotiation of the resultant contract, which organization will have accounting responsibility, how work will be allocated, and profit or fee, if any, shared. In addition, the principles to the joint venture or partnership agreement must agree to be jointly and severally liable for the acts or omissions of the other.

Information Concerning Work-Day, Work-Week and Paid Absences

(i) The Offeror and each proposed major subcontractor must indicate the number of hours and days in its normal work-day and its normal work-week, both domestically and overseas, for employees and consultants. In addition, the Offeror and each proposed major subcontractor must indicate how paid absences (US holidays, local holidays, vacation and sick leave) must be covered.

(ii) A normal work-year, including paid absences (holidays, vacation and sick leave) is 2,080 hours (260 days x 8 hours per day). However, some organizations do not have an 8- hour workday and some accounting systems normally provide for direct recovery of paid absences by using a work-year of less than 2,080 hours to compute individuals' unburdened daily rates. The Offeror and major subcontractors must describe their core work-day and work-week policies.

(iii) The work-day and work-week policies and the method of accounting for paid absences for the Offeror and major subcontractors in effect at the time of award will remain enforced throughout the period of the award.

[END OF SECTION L]

SECTION M - EVALUATION FACTORS FOR AWARD

M.1 NOTICE LISTING SOLICITATION PROVISIONS INCORPORATED BY REFERENCE

The following solicitation provisions pertinent to this section are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with FAR provision at FAR "52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE" in Section M of this solicitation. See <http://acquisition.gov/far/index.html> for electronic access to the full text of a FAR clause.

NUMBER	TITLE	DATE
FEDERAL ACQUISITION REGULATION (48 CFR Chapter 1)		

M.2 GENERAL AND SOURCE SELECTION INFORMATION

- A. **Discussion with Offeror:** The Government may award a contract without discussions with Offerors in accordance with FAR 52.215-1. Therefore, Offerors are required to submit their best technical and cost proposals in the initial offer. USAID reserves the right to conduct discussions in the Contracting Officers determines them necessary.
- B. The Government intends to evaluate proposals in accordance with Section M of this RFP and award to the responsible Offeror(s) whose proposal(s) represents the best value to the U.S. Government.
- C. The submitted technical information will be scored by a technical evaluation panel using the technical criteria shown below. The evaluation panel may include industry experts who are not employees of the Federal Government. When evaluating the competing Offerors, the Government will consider the written qualifications and capability information provided by the Offerors, and any other information obtained by the Government through its own research.
- D. In accordance with FAR 15.304(e)(1), all evaluation factors other than cost and price when combined are considered significantly more important than cost/price factors.

M.3 METHOD OF EVALUATION

Proposals received in response to this RFP will be evaluated by a USAID Evaluation Committee in accordance with AIDAR 715.3. The Source Selection Authority (SSA), after consultation with the evaluation committee and other advisors, will select for contract award the Offeror which he or she considers to be able to perform the contract in a manner that constitutes the best value to the Government, all factors considered.

M.4 TECHNICAL EVALUATION FACTORS

The following evaluation criteria (1) serve as the standard against which all proposals will be evaluated; and (2) serve to identify the significant factors which Offerors should address in their Technical Proposal (Volume I).

- a. Factor Identification – The technical evaluation committee will evaluate Offerors' proposals using the factors listed below. The evaluation criteria are presented by major category in the descending order of importance.

FACTOR	FACTOR NAME
Factor 1	Technical Approach
Factor 2	Management Approach
Factor 3	Collaboration, Learning and Adapting (CLA)
Factor 4	Past Performance

b. Evaluation Criteria for Each Factor

(1) TECHNICAL APPROACH:

The extent to which the proposed approach demonstrates a sound, innovative, and effective approach to meet Activity objectives, sub-objectives, and expected results as outlined in the Statement of Work, based on a thorough awareness of Ukraine’s historical and cultural context as well as the political, judicial and rule of law reform environment. The extent to which the Offeror incorporates the “Cross-cutting Considerations” and the “Implementation Principles and Tools” as described in Section C throughout the technical approach. The extent to which the Initial Implementation Plan presents a realistic and feasible plan to launch Activity operations in a timely manner, achieve results in Year 1, and meet requirements.

(2) MANAGEMENT APPROACH:

The extent to which the approach (through the management plan, staffing plan and personnel) will ensure that the Activity achieves and sustains objectives; engages and manages sub-contractors/partners and local/international expertise in an efficient way; and engages effectively with the range of local partners defined in Section C. The extent to which the proposed personnel and their experience are relevant and necessary for the effective implementation of the activity.

(3) COLLABORATION, LEARNING AND ADAPTING (CLA):

The extent to which the Offeror’s approach ensures effective, data-driven coordination and collaboration with USAID, GOU initiatives, other USAID activities, other donors and donor programs, and other stakeholders. The extent to which the draft MEL Plan will ensure monitoring, evaluating and managing performance towards the Activity purpose, objectives, and sub-objectives. The extent to which the offeror will incorporate learning and adapt activity interventions through the performance period, particularly to respond and adapt to Ukraine’s dynamic institutional, political, and reform context.

(4) PAST PERFORMANCE:

This factor will be evaluated to what extent the Offeror’s past performance demonstrates an appropriate record of implementation compliance in delivering products/services under similar/relevant projects.

(a)Quality - To what extent the quality of product/service consistently conformed to award requirements and to what degree the Offeror’s work measured up with accepted technical standards. To what degree the client technical direction was required to solve problems during performance.

(b)Cost Control - To what extent the Offeror was effective in forecasting, managing, and controlling cost. To what degree the Offeror instituted mitigation measures to deal with cost growth or underrun, and to what extent the Offeror provided accurate financial reporting. The degree to which the Offeror provided innovative measures

that resulted in cost savings.

(c) Schedule - To what degree the Offeror adhered to completion of the award, milestones, delivery schedules, and administrative requirements. To what extent the Offeror furnished all required deliverables on or ahead of schedule

(d) Management - To what extent the Offeror integrated and coordinated all activities needed to execute the award, including:

- (i) Management Responsiveness: degree of timeliness, completeness and quality of problem identification, corrective action plans, the Offeror's history of reasonable and cooperative behavior, effective business relations, and customer satisfaction.
- (ii) Subcontract Management: degree of Offeror's success with timely award and management of subcontracts
- (iii) Management of key personnel: The selection of right personnel, retention and support provided. Whether the Offeror promptly replaced key personnel when problems with clients were identified

(e) Regulatory Compliance - To the extent the Offeror complied with terms and conditions of awards relating to applicable regulations and codes such as financial, environmental, etc.

(f) Utilization of Small Business - To what extent the Offeror complied with terms and conditions promoting Small Business participation, including efforts in achieving small business participation goals.

1. Adverse past performance information, to which the Offeror has not previously had an opportunity to respond, will be addressed in accordance with the policies and procedures set forth in the FAR 15.3.
2. An Offeror's performance will not be evaluated favorably or unfavorably when:
 - (i) The Offeror lacks relevant performance history,
 - (ii) Information on performance is not available, or
 - (iii) The Offeror is a member of a class of Offerors where there is provision not to rate the class against a sub factor.

When this occurs, an Offeror lacking relevant performance history is assigned a "neutral" rating. Prior to assigning a "neutral" past performance rating, the Contracting Officer may take into account a broad range of information related to an Offeror's performance.

An exception to this "neutral" rating provision is when a non-small businesses prime has no history of subcontracting with small business concerns.

Prior to assigning a "neutral" past performance rating, the contracting officer may take into account a broad range of information related to an Offeror's performance.

Factors under Past Performance are considered equal in weight.

M.5 COST PROPOSAL EVALUATION

USAID/Ukraine will not award evaluation points to or score an Offeror's cost proposal.

The evaluation of the Offeror's cost proposal will deal with cost analysis and cost realism analysis.

This analysis will consist of a review of the cost portion of the Offeror's proposal to determine if the overall costs proposed are: 1) realistic for the work to be performed; 2) reflect the Offeror understands of the requirements; and 3) are consistent with the technical proposal. Evaluation of cost proposals will consider, but not be limited to the following:

1. Cost realism and completeness of cost proposal and supporting documentation.
2. Overall cost control evidenced by the proposal (such as avoidance of excessive salaries, excessive home office staff visits, and other costs in excess of reasonable requirements).

The analysis will include the proposed maximum cost and fee, and all other direct costs. This analysis will be conducted to determine reasonableness and realism of proposed costs and the extent to which they reflect potential technical assistance addressed in the technical proposal.

A probable cost will be developed and evaluated. The reasonableness of the proposed fee will also be determined in accordance with the guidelines set forth in FAR Part 15 and 16.

Offerors are reminded that the U.S. Government is not obligated to award a negotiated contract on the basis of the lowest proposed cost (see FAR 15.101-1) or to the Offeror with the highest technical evaluation score.

M.6 DETERMINATION OF THE COMPETITIVE RANGE AND CONTRACT AWARD

A. Competitive Range: If the Contracting Officer determines that discussions are necessary, he/she will establish a Competitive Range composed of only the most highly rated proposals. In certain circumstances the Contracting Officer may determine that the number of most highly rated proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Should that be the case, the Contracting Officer may then limit offers in the competitive range to the greatest number that will permit an efficient competition among the most highly rated offers. The Government may exclude an offer if it is so deficient as to essentially require a new technical proposal. The Government may exclude an offer so unreasonably priced, in relation to more competitive offers, as to appear that there will be little or no chance of becoming competitive. The Government may exclude an offer requiring extensive discussions, a complete rewrite, or major revisions such as to allow an Offeror unfair advantage over those more competitive offers.

B. Award: In accordance with FAR 52.215-1(f), the Government intends to award a contract resulting from this solicitation to the responsible Offeror(s) whose proposal(s) represent the best value after evaluation in accordance with the factors and subfactors (if any) as set forth in this solicitation.

M.7 SOURCE SELECTION

A. The overall evaluation methodology set forth above will be used by the Contracting Officer as a guide in determining which proposal(s) offer the best value to the U.S. Government. In accordance with FAR 52.215-1, and as set forth in Section L of this solicitation, award will be made by the Contracting Officer to the responsible Offeror whose proposal represents the best value to the U.S. Government after evaluation in accordance with all factors and sub-factors in this solicitation.

B. This procurement utilizes the tradeoff process set forth in FAR 15.101-1. If the Contracting Officer determines that competing technical proposals are essentially equal, cost/price factors may become

the determining factor in source selection. In accordance with FAR 15.304(e)(1), all evaluation factors other than cost and price when combined are considered significantly more important than cost/price factors. The Contracting Officer may award to a higher priced Offeror if a determination is made that the higher technical evaluation of that Offeror merits the additional cost/price.

[END OF SECTION M]

ATTACHMENT J.1

SF-1420-17 CONTRACTOR BIOGRAPHICAL DATA SHEET

(attached, the form can also be downloaded at <http://www.usaid.gov/forms/>)

ATTACHMENT J.2

SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

(Attached, the form can be downloaded at <http://www.usaid.gov/forms/>)

ATTACHMENT J.3

CONTRACTOR PERFORMANCE REPORT – SHORT FORM

CONTRACTOR PERFORMANCE REPORT - SHORT FORM
PART I: Contract Information (to be completed by Offeror)
1. Name of Contracting Entity:
2. Contract Number:
3. Contract Type:
4. Contract Value (TEC): (if subcontract, subcontract value)
5. Description of Work/Services/and overall performance rating:
6. Problem: (if problems encountered on this contract, explain corrective action taken)
7. Contacts: (Name, Telephone Number and E-mail address)
7a. Contracting Officer: Phone Number: Email Address:
7b. Other:
8. Offeror:
9. Information Provided in Response to RFP No.:

ATTACHMENT J.4

SUMMARY BUDGET FORMAT

(This summary budget format will be used for the purpose of evaluating cost for the award of the contract)

Cost Category	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Labor Costs (Salaries and Wages)						
Long-Term Expatriates						
Long-Term Local Professionals						
Long-Term Local Support Staff						
Home Office Staff						
Fringe Benefits						
Long-Term Expatriates						
Long-Term Local Professionals						
Long-Term Local Support Staff						
Home Office Staff						
Allowances						
Long-Term Expatriate						
Short-Term Expatriate						
Consultants (STTA)						
Subcontracted Expatriate						
Subcontracted Local						
Travel, Transportation, and Per Diem						
Entitlement Travel						
Programmatic Travel by Staff						
Consultant Travel						
Equipment and Supplies						
Training						
Subcontracts*						
GUC						\$5,000,000
Environmental Compliance Costs (if any)						
Other Direct Costs						
Indirect Costs						
Total Estimated Cost (TEC)						
Fixed Fee						
TEC + Fixed Fee						

* = Individual subcontractors should include the same cost element breakdowns in their budgets, as applicable.

ATTACHMENT J.5

IDENTIFICATION OF PRINCIPAL GEOGRAPHIC CODES

The USAID Geographic Code Book sets forth the official description of all geographic codes used by USAID in authorizing or implementing documents, to designate authorized source countries or areas. The following are summaries of the principal codes:

1) Code 937 (the United States, the recipient country, and developing countries other than advanced developing countries, but excluding any country that is a prohibited source) is the authorized USAID Principal Geographic Code for the procurement of commodities and services.

2) Code 110 (the United States, the independent states of the former Soviet Union, or a developing country, but excluding any country that is a prohibited source) is the authorized USAID Principal Geographic Code for procurement of commodities and services under grants to any of the New Independent States, or to a contractor under USAID direct contracts or to recipient of a grant or cooperative agreement under an implementing document authorizing procurement in any of the New Independent States.

3) Code 935 (any area or country including the recipient country, but excluding any country that is a prohibited source) is the authorized USAID Principal Geographic Code for procurement of commodities and services.

ATTACHMENT J.6

REQUEST FOR CATEGORICAL EXCLUSION (RCE) (2021-UKR-018) -- ATTACHED

ATTACHMENT J.7

GOVERNMENT-FURNISHED PROPERTY

The attached government-furnished property is available to Offerors should they choose to use it, but use of this property is not required. All items are listed as “good” condition.

[END OF REQUEST FOR PROPOSAL]