

WHOI REQUEST FOR PROPOSAL

Fuel Cell

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WOODS HOLE OCEANOGRAPHIC INSTITUTION
REQUEST FOR PROPOSAL
#10-11-2012 FUEL CELL

Date: TBA

Contract Number: TBA

ISSUED BY:

Woods Hole Oceanographic Institution
266 Woods Hole Road
Woods Hole MA 02543

CONTRACTOR:

TBA

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The Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified herein and/or any continuation sheets for consideration stated herein. Woods Hole Oceanographic Institution (WHOI) agrees to pay the Contractor for the items and services provided by the Contractor as set forth or otherwise identified above and/or listed on any continuation sheets for consideration stated herein. The rights and obligation of the parties to this contract shall be subject to and governed by the following documents: (a) this contract and (b) such provisions, representations, certifications and specifications as are attached or incorporated by reference herein.

IN WITNESS WHEREOF, the parties have executed this contract as of the date first written above.

FOR WOODS HOLE OCEANOGRAPHIC INSTITUTION:
NAME: _____
SIGNATURE: _____
DATE: _____

FOR TBA
NAME: _____
SIGNATURE: _____
DATE: _____

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SECTION A - RFP GENERAL INFORMATION

Woods Hole Oceanographic Institution (hereinafter referred to as “WHOI”) with funding from the National Science Foundation (NSF), is soliciting proposals from qualified organizations interested in providing Fuel Cells and related services to support the objective of the Ocean Observatories Initiative (OOI). The OOI will construct a networked infrastructure of oceanic sensor systems to measure physical, chemical, geological, and biological variables in the ocean and seafloor.

The purpose of this Request for Proposals (RFP) is to select an Offeror who will provide the Fuel Cells needed as described in Section C and in accordance with the specifications stated in Section J.

WHOI intends to award a Cost Plus Fixed Fee (CPFF) contract as identified in Section B-2 of the contract for Contract Line Item Numbers (CLIN) 0001- 0002. The Not-To-Exceed (NTE) price portion (CLINs 0003 and 0004), if option is exercised, is intended to be a negotiated firm fixed price (FFP) action, upon completion of CLINS 0001-0002, and based upon the NTE price provided in Section B-1.

The RFP addresses all of the specifics associated with this award. Special attention should be paid to Section L, Instructions to Offerors, and Section M, Evaluation Factors for award. WHOI reserves the right to relax any requirement in the specification during discussions in an effort to achieve an award at an affordable price. WHOI will limit negotiations (if needed) to offerors who submit an initial proposal.

This RFP does not obligate WHOI to award any contract nor does it commit WHOI to pay for any costs incurred in the preparation and/or submission of proposals.

A-1 Issuing Office/Proposal Due Date

WHOI is the only point of contact for this procurement. All communications between Offerors and the Procuring Organization regarding this RFP and procurement shall be through the Procuring Organization’s designated Point of Contact (POC):

ATTN: Mr. Dennis Fox, Contracting Officer, Director of Procurement,
MS#1, Woods Hole, MA 02543,
508.289.2361
dfox@whoi.edu

Any questions related to this RFP should be emailed to the Point of Contact (POC) identified above by 4PM EDT October 31, 2012 and include “Fuel Cell Questions” in the subject line. Questions will not be accepted after this date. Answers to Offeror-submitted questions will be provided to everyone responding to this RFP.

Offerors shall provide a proposal by 4PM EDT on November 30, 2012 in accordance with the General Proposal Instructions identified Section L.

A-2 CONFORMANCE CHECKLIST

The Offeror shall complete the Proposal Conformance Checklist included as Section J, Attachment 2 to this RFP and submit it together with the proposal.

(End of Section A)

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SECTION B – SUPPLIES OR SERVICES AND PRICES/COSTS

The Contractor shall deliver Fuel Cells, labor, materials and products, and perform the described services under this contract.

B-1 Price/Cost Table (Contract Line Item Numbers – Bidder to quote)

CLINs	Target Cost	Fixed Fee	Cost Plus Fixed Fee
0001	Fuel Cell Development - Provide an accurate, complete, and producible design and develop and demonstrate a prototype for a Fuel Cell system. Development of the Fuel Cell system must include the integration of fuel cells and auxiliary sub-systems into a system that meets specifications contained in Section J.		
	\$	\$	\$
0002	First article construction and testing of the Fuel Cell system developed in 0001 (If option is exercised). 1 unit requested: Qualification Testing. This unit will ultimately be delivered as a production unit.		
	\$	\$	\$
CLINs	Items	Unit	Fixed Price
0003	Fuel Cell Production (If option is exercised)		
	(Quantity: 10)		Not to Exceed Price \$
0004	Spare Parts and Accessories for the Fuel Cell (If option is exercised) TBD		
0005	Contract Data Requirements List (CDRL) for CLINs 0001, 0002 (if option is exercised), 0003 (if option is exercised), and 0004 (if option is exercised)		
	Not separately priced.		

B-2 Contract Type Summary for Payment Office (Cost Type)

CLINs 0001 and 0002 are cost-plus-fixed fee (CPFF). Period of performance for CLIN 0001 is 3 months After Receipt of Order (ARO), and CLIN 0002 is 5 months after exercise of option, with qualification and Production Readiness Review 3 months later.

CLIN 0003 (if Option is exercised) will be negotiated upon completion of CLINs 0001 and 0002 and will be a firm fixed price (FFP). Negotiated fixed price will be based on the Not to Exceed (NTE) price for CLIN 0003 provided in Section B-1. Exercise of this option to produce CLIN 0003 is contingent upon the successful outcome of CLINs 0001 and 0002. Period of performance for CLIN 0003 is 5 months after exercise of option. NTE estimates for CLIN 0003 will be incorporated into the cost evaluation and the producibility portion of the technical evaluation.

CLIN 0004 (if Option is exercised) will be a FFP CLIN. CLIN 0005 is unpriced. Costs are included in CLINs 0001 through 0004, respectively.

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B-3 Payments of Fee(s) (Completion) (Applicable to CLINs 0001 and 0002 Only)

- A. For purposes of this contract, "fee" means "fixed fee."
- B. WHOI shall make payments to the Contractor, subject to and in accordance with the clause in this contract entitled "Fixed Fee" (FAR 52.216.8).
- C. In the event of discontinuance of the work under this contract, or any specified phase of the contract, in accordance with the clause of this contract entitled "Limitation of Funds", (FAR 52.232-22) as applicable, the fee shall be equitably adjusted by mutual agreement to reflect the diminution of work. If the adjusted fee is less than the sum of all fee payments made to the Contractor under this contract, the Contractor shall repay the excess amount to WHOI. If the adjusted fee exceeds all payments made to the Contractor under this contract, the Contractor shall be paid the additional amount, subject to the availability of funds. In no event shall WHOI be required to pay the Contractor any amount in excess of the funds obligated under this contract at the time of the discontinuance of work.
- D. Fee(s) withheld pursuant to the terms and conditions of this contract shall not be paid until the contract has been modified to reduce the fee(s) in accordance with paragraph (c) above, or until the Procuring Contracting Officer has advised the paying office in writing that no fee adjustment is required.

B-4 Contract Funding

WHOI anticipates the funding under CLINs 0001-0003 not to exceed \$_____ over a period of ___ months, as shown in Section B-1.

WHOI is not obligated to reimburse the Awardee for cost incurred in excess of the total amount allotted in the incremental funding documents supporting this procurement. Subrecipient should not incur costs in excess of the amount allotted in the contract unless WHOI notifies the Awardee in writing that the amount has been increased.

CLIN	Target Cost	Previous Funding	This Increment
CLIN-0001	\$	\$0	\$
CLIN-0002 (if exercised)	\$	\$0	\$
CLIN	NTE Price		
CLIN-0003 (if exercised)	\$	\$0	\$
CLIN-0004 (if exercised)	\$	\$0	\$

For purposes of payment of cost and pursuant to the Limitation of Funds clause of this contract, the total amount currently funded by WHOI to this contract is \$_____ to cover performance of CLIN 0001. This amount shall be adjusted by funding modifications from WHOI in accordance with the Limitation of Funds Clause.

Upon signing this contract, Contractor certifies that it has an accounting system established in advance of award that is adequate for tracking costs applicable to the contract and its CLINs and capable of segregation of funds in each CLIN and that Contractor will comply with the applicable or governing rules for expenditures of federal funds.

(End of Section B)

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SECTION C – DESCRIPTION/SPECIFICATION/WORK STATEMENT

PART 1 – CONTRACT LINE DESCRIPTION

1.0 General

This Statement of Work (SOW) is for the design and first article construction and testing and production of a 3309-00046 Fuel Cell.

1.2 CLIN 0001 – DESIGN OF FUEL CELL

The Contractor shall develop a design for a Fuel Cell for WHOI in accordance with specifications in the 3309-00046, Fuel Cell Specification (Attachment 1) and 3701-00313, Buoy/Fuel Cell Interface Control Drawing (ICD) (Attachment 12). The Contractor shall provide efforts necessary to develop a complete, accurate, and producible design with descriptive documentation which is adequate for use for the Fuel Cell and subsequent operation, maintenance, testing/evaluation, and repair in the most efficient and cost-effective manner. The Contractor effort encompasses the orderly and uninterrupted continuation of design from concept development through detail design, including, but not limited to:

Completion of a design for the Fuel Cell that efficiently performs its prescribed mission; can be operated, maintained, and supported safely and affordably; and supports sustained operations in accordance with the 3309-00046, Fuel Cell Specification (Attachment 1) and 3701-00313, Buoy/Fuel Cell Interface Control Drawing (Attachment 12).

This effort shall include, but shall not be limited to the following:

- A. Development of the Fuel Cell assembly drawings, system diagrams, interface specifications, interface control documents, system layouts, logistics data, prototype and other technical documentation and data required for the Fuel Cell fabrication, assembly, operation and maintenance.
- B. Performance of all engineering calculations, preparation of design and testing documents to support the design and orderly fabrication and assembly of the Fuel Cell, and other technical documentation and data required in support of the design effort and design history.
- C. Provision of all engineering, design (drawings, data, tests, etc.), technical support, and other efforts.
- D. Provision of technical support personnel and technical information for assistance during the development and testing process leading to final delivery of the Fuel Cell.
- E. Provision of the management effort necessary to ensure the on-schedule completion of the Fuel Cell design and documentation. The Contractor shall identify and maintain visibility of all problems and potential problems arising during contract performance which could impact the schedule and/or cost. The Contractor shall continue to organize, integrate and control program activities to resolve problems of development and design through the agreed to period of performance. The Contractor shall establish and maintain a schedule baseline for use by both Contractor and WHOI management personnel for planning, tracking, and reporting the schedule status of major activities, milestones, and all Contractor Data Requirements List (CDRL)

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deliverables. To accomplish this, the Contractor will perform the efforts listed below, including but not limited to the following:

- 1) Coordinate Program Management Reviews.
 - 2) Coordinate Design Reviews.
- F. The Contractor is responsible for participation in Quarterly Program Progress and Status Review conferences.
- G. The Contractor is responsible for development of a product compliant with the specification # 3309-00046, Fuel Cell Specification, Attachment 1 and drawing 3701-00313, Buoy/Fuel Cell ICD, Attachment 12, culminating in a design review.
- H. The Contractor shall provide monthly progress, financial, and all other required reports.
- I. The Contractor or his subcontractor shall provide design, documentation management, and support activities necessary to ensure the on-schedule completion of the development of the Fuel Cell. The Contractor shall identify and maintain visibility of all problems and potential problems arising during contract performance which could impact the schedule and/or cost. The Contractor shall continue to organize, integrate and control program activities to resolve problems of design of the Fuel Cell through the agreed to period of performance.
- J. Design information and material generated and used during CLIN 0001 shall be employed for subsequent CLINs and future procurements.
- K. All equipment and material furnished under CLIN 0001 (whether procured or manufactured by the Contractor) and any resulting modification to CLIN 0001 is considered Contractor Furnished Equipment (CFE). A prototype Fuel Cell unit will be delivered to the CGSN team.

1.4 CLIN 0002 (if Option is exercised) – FIRST ARTICLE CONSTRUCTION AND TESTING OF THE FUEL CELL

The Contractor shall perform the first article construction and testing of one Fuel Cell in accordance with the 3309-00046 Fuel Cell and Specification (Attachment 1), drawing 3701-00313, Buoy/Fuel Cell ICD Attachment 12, and the design developed in CLIN 0002. The First Article units will be a production representative versions of the complete Fuel Cell. This effort shall encompass all necessary material procurements, vendor oversight, manufacturing, quality assurance, inspections, tests, storage, preservation, and vendor assistance in troubleshooting and resolving technical and operational problems. One first article Fuel Cell will be delivered as directed by the WHOI Contracting Officer following the Test Readiness Review. The second first article Fuel Cell will continue to undergo qualification testing conducted by the supplier.

The Contractor shall provide the management effort necessary to ensure the on-schedule completion of the Fuel Cells (first article construction and testing) in the most efficient and cost-effective manner. The Contractor shall identify and maintain visibility of all problems and potential problems arising during contract performance which could impact the schedule and/or cost. The Contractor shall continue to organize, integrate, and control program activities to resolve problems of the first article fabrication and testing of the Fuel Cells through the agreed-to period of performance. To accomplish this, the Contractor will perform the efforts listed below, including but not limited to the following:

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- A. Continuation effort provided in CLIN 0001, paras. 1.2 above: the Contractor or its subcontractor shall provide first article construction and testing documentation management and support activities necessary to ensure the on-schedule completion of first article construction and testing of one Fuel Cell. The Contractor shall establish and maintain a schedule baseline for use by both Contractor and WHOI management personnel for planning, tracking, and reporting the scheduled status of major activities, milestones, and all Contractor Data Requirements List (CDRL) deliverables. To accomplish this, the Contractor will continue efforts listed below, but will also include those necessary for first article construction and testing, including but not limited to the following:
- 1) Continue (as in CLIN 0001) to Coordinate Program Management Reviews.
 - 2) Coordinate design verification reviews.
- B. The contractor is responsible for participation in Quarterly Program Progress and Status Review(s).
- C. The contractor is responsible for performance of material sourcing and material ordering preparation to support orderly Fuel Cell first article construction and testing.
- D. The Contractor is responsible for testing interfaces as part of first article construction and testing.
- E. The Contractor shall provide traditional first article construction and testing support activities for the Fuel Cells.
- F. The Contractor shall conduct and support acceptance testing as stipulated in Attachment 3.

The requirements of CLIN 0002 shall be accomplished in accordance with the 3309-00046 Fuel Cell Specification (Attachment 1), drawing 3701-00313, Buoy/Fuel Cell ICD (Attachment 12) and the Fuel Cell Test Verification Matrix (Attachment 3).

1.5 CLIN 0003 (if Option is exercised) – FUEL CELL PRODUCTION

Unpriced Option. It is anticipated that this CLIN will be divided into sub-CLINs for each unit to be procured. For planning purposes, initial procurements, by part number, are planned as ten (10) 3309-00046-00001.

1.6 CLIN 0004 (if Option is exercised) – FUEL CELL SPARE PARTS AND ACCESSORIES

Unpriced Option. This CLIN will be used to procure spare parts and accessories, if needed. It may be divided into sub-CLINs.

1.7 CLIN 0005 – DATA FOR CLINs 0001, 0002 (IF OPTION IS EXERCISED), 0003 (IF OPTION IS EXERCISED) AND 0004 (IF OPTION IS EXERCISED)

The data for CLINs 0001, 0002, 0003 and 0004 to be furnished hereunder shall be prepared in accordance with Contract Data Requirements List attached hereto as Table 1.

TABLE 1 – Contract Data Requirements List (CDRL)

Formats shall be offeror format in digital files as noted. Deliveries shall be via EMAIL to the Contracting Officer with copy to the COTR and QA representative.

ARO = After Receipt of Order.

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CLIN	CDRL #	Title	Content (file format)	Delivery
0001,	A001,	Monthly Status Report	Project and financial status with respect to the schedule/plan. (MS Word)	Monthly by the 7 th calendar day of the month. First report due at end of first full month ARO.
0001,	A002,	Project Schedule	List of detailed tasks for CLIN 0001 showing duration and sequence with high level flow into CLIN 0002 to meet project milestones. (MS Project)	Draft with Proposal, Final 10 days ARO, updates as required
0001,	A003,	Configuration Management Plan	Plans and procedures defining review, release and control of design, test and production documentation. (PDF)	1 month ARO
0001,	A004,	Quality Assurance Plan and Procedure	Plans and procedures defining the awardee Quality System including requirements and processes for material receipt and inspection, design review and approval, manufacturing inspection and test, and maintenance of records. (PDF)	1 month ARO
0001,	A005,	Technical Data Package	Documentation of the design to enable build, test, inspection and acceptance. (PDF)	2 weeks prior to each Design Review
0001,	A006,	Design Verification Report	Document engineering tests, analysis and design features showing status of requirements compliance for the design. (MS Word)	2 weeks prior to each Design Review
0001,	A007,	Qualification Test Plan and Procedures	Plans and procedures for verification of requirements. (PDF)	2 weeks prior to each Design Review
0001,	A008,	Configuration and Diagnostics Software	Draft of the Configuration and Diagnostics software with modifications as required for this specific Fuel Cell. (Native file format with PC version executable)	2 weeks prior to each Design Review
0001,	A009,	Maintenance Plan	Draft of the Maintenance Manual with modifications as required for the Fuel Cell. (PDF)	2 weeks prior to each Design Review
0001,	A010,	Operator's Manual	Draft of the Operator's Manual	2 weeks prior to

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			with modifications as required for the Fuel Cell.. Operator's Manual will define use of the Configuration and Diagnostics Software as well as programming and pre-installation test requirements. (PDF)	each Design Review
0001,	A011,	List of Spares	List of Available Spares for Fuel Cell components with suggested quantity and lead times. (PDF)	1 month ARO
0001,	A012,	Quality Audit	Report showing Quality System was audited during the period of performance. The report shall indicate the status of the system, level of compliance and corrective actions. (PDF)	Within 3 months ARO
0001	A013	Design Review	Present the design proposed for first article production and qualification testing. Show aspects of the design related to requirements compliance and verification status to date, including prototype test results and Qualification Plans going forward. Present the schedule for first article build and qualification. Present updated Unit Production Cost values and efforts to reduce production costs. Present maintenance and operations details. (MS Powerpoint)	June 2013, Review presentation materials 1 week in advance of review
0001,	A014,	Producibility Plan Review	Deliver prototype unit to CGSN. Document the Unit Production Cost build up aligned to the design presented in A013. Re-evaluate risks, their impact and mitigation strategies. (PDF)	2 weeks prior to each Design Review
0002,	B001,	Monthly Status Report	Project and financial status with respect to the schedule/plan. (MS Word)	Monthly by the 7 th of the month, continuation from CLIN 0001
0002,	B002,	Project Schedule	Project schedule finalization	10 days ARO

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0002,	B003,	Configuration Management Plan	(MS Project) Update from CLIN 0001 (PDF)	1 month ARO
0002,	B004,	Quality Assurance Plan and Procedure	Update from CLIN 0001 (PDF)	1 month ARO
0002,	B005,	Technical Data Package	Updates during and following First Article. (PDF)	1 week prior to each Test Readiness Review, update 1 week prior to each Production Readiness Review
0002,	B006,	Test Readiness Review, Fuel Cell	Present design updates from first article fabrication, fabrication records and test records. Present design verification test results to date and the plan for the Qualification Test. (MS Powerpoint)	October 2013, presentation materials 1 week prior to review
			Deliver one first article unit to CGSN.	
0002	B007	Qualification/Production Readiness Review, Fuel Cell	Present Qualification Test results, analysis and complete verification matrix. Present design updates from Qualification Testing. Present Production Plan for quantity and schedule determined for CLIN 0003 (if option is exercised). Present process and test documentation to support production. (MS Powerpoint)	February 2014, presentation materials 1 week prior to review
0002,	B008,	Qualification Test Report	Results of requirements verification by test. Completed verification matrix. (MS Word)	2 weeks prior to Qualification Review
0002,	B009,	Production Planning Schedule	Schedule showing production plan for units to be delivered under CLIN 0003 (if option is exercised). Includes production plan for items ordered under CLIN 0004 (if option is exercised). (MS Project)	2 weeks prior to Production Readiness Review
0002,	B010,	Production Test Plan and	Plans and procedures for	2 weeks prior to

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		Procedures	assembly and test at levels up to and including Factory Acceptance Test. (PDF)	Production Readiness Review
0002, 0002,	B011, B012,	Quality Audit Maintenance Manual	Update to A012 (PDF) Finalized version, update to A009 (PDF)	3 months ARO 1 month prior to each Production Readiness Review
0002,	B013,	Configuration and Diagnostics Software	Finalized version , update to A008 (native file and PC executable version)	1 month prior to each Production Readiness Review
0002,	B014,	Recommended Spares List	Finalized list of ready spares for the unit with lead times and pricing (PDF)	1 month prior to each Production Readiness Review
0003	C001	Factory Acceptance Test Report	Factory Acceptance Test data and certification of compliance to Specification (PDF)	With each unit delivered
0003	C002	Reserved		
0003	C003	As-Built Configuration	Configuration record for construction of the unit (Excel)	With each unit delivered
0003 & 0004	D001	Certifications	Certifications for items ordered and received. (PDF)	TBD

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SECTION D – PACKAGING AND MARKING

D-1 CLINs 0001, 0002 (if Option is exercised), 0003 (if Option is exercised), 0004 (if Option is exercised)– Except as specifically described in this agreement, all data shall be prepared for shipment in accordance with best commercial practice.

Packaging and Packing: Data (e.g. reports, invoices, certifications) shall be prepared for delivery in such a manner as to insure that the required information is protected against deterioration, physical damage, or loss during shipment from the contractor to the receiving activity. Materials shall be prepared for shipment in such a manner to insure that the materials will not be damaged during shipment.

Marking and packaging shall be in accordance with Fuel Cell Specification # 3309-00046. Any limitation on shipment modes must be clearly identified and approved by the Coastal and Global Scale Nodes (CGSN) Contracting Officer.

D-2 MARKING OF REPORTS

All reports delivered by the Contractor to Contracting Officer under this contract shall prominently show on the cover of the report and other documentation, the title, date of issue (and revision number if applicable), and preparer name. Reports will clearly indicate that they are produced as part of the OOI project for the CGSN Team. An approval block for internal review and approval will be provided.

D-3 IDENTIFICATION MARKING OF PARTS

Delivered End Items – CLIN 0002 (if option is exercised), and CLIN 0003 (if option is exercised) Units shall be marked in accordance with the specification.

Spare Parts – CLIN 0004 (if option is exercised) parts shall be marked.

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SECTION E – INSPECTION AND ACCEPTANCE

E-1 PLACE OF INSPECTION AND ACCEPTANCE

CLIN 0001: Upon Contractor’s completion of the development of the Fuel Cell, a design review will be conducted by the contractor to the CGSN Team showing compliance with the Fuel Cell Specification 3309-00046(Attachment 1) and drawing 3701-00313, Buoy/Fuel Cell ICD (Attachment 12). As part of CLIN 0001, a prototype unit will be requested for delivery in June 2013.

Development completion will require a Design Verification Report showing how and the extent to which the end item meets the requirements of Attachments 1 and 12.

CLIN 0002: (if Option is exercised) Upon Contractor’s completion of the first article construction of one fuel cell it will be delivered to WHOI following the Test Readiness Review and will be used for qualification duration testing in accordance with Attachment 3. A qualification test report shall be delivered. The contractor shall conduct a qualification test review of the Fuel Cell (as described in SECTION C, CLIN 0003), and all sub-assemblies will be inspected by the Contracting Officer or his/her representative.

CLIN 0003: (if Option is exercised) TBD

CLIN 0004: (if Option is exercised) TBD

CLIN 0005: Inspection and acceptance of all data shall be as specified on the attached Contract Data Requirements List (Table 1).

E-2 CLAUSES INCORPORATED BY REFERENCE

FAR SOURCE TITLE AND DATE

52.246-3	Inspection of Supplies – Cost-Reimbursement (May 2001)
52.246-5	Inspection of Services – Cost-Reimbursement (Apr 1984)
52.246-16	Responsibility for Supplies (Apr 1984)

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SECTION F – DELIVERIES OR PERFORMANCE

F-1 REQUIREMENTS

The Contractor shall complete the procurement CLIN(s) 0001, 0002 (if Option is exercised), CLIN 0003 (if Option is exercised), CLIN 0004 (if Option is exercised) in the following schedule:

<u>Line Item</u>	<u>Item Description</u>	<u>Milestone Dates</u>
0001	Design and Prototype Review of the Fuel Cell	June 2013
0002	First Article Test Readiness Review and First Article delivered – Fuel Cell (if Option is exercised)	October 2013
0002	Qualification Review, Fuel Cell Production Readiness Review (PRR) (if Option is exercised)	February 2014
0003	First Production Units Delivered – Fuel Cell (if Option is exercised)	June 2014
0004	Spare Parts (if Option is exercised)	TBD

Unless otherwise specified in any order, the supplies to be furnished by the Contractor shall be delivered F.O.B. destination unless otherwise authorized by the Contracting Officer. The method of shipment will be specified in writing by the cognizant contract administration office when the supplies are ready for shipment.

CLINs 0001, 0002 (if Option is exercised), 0003 (if Option is exercised), 0004 (if Option is exercised), 0005 – All data to be furnished under the CLINs specified in SECTION B shall be delivered prepaid to the destination(s) by the date(s) specified in the attached CDRL, Table 1.

F-2 CLAUSES INCORPORATED BY REFERENCE

FAR SOURCE TITLE AND DATE

52.242-16	Stop-Work Order - Facilities (Aug 1989)
52.247-29	F.O.B. Origin (Jun 1988)
52.247-55	F.O.B. Point for Delivery of Government-Furnished Property (Apr 1984) (to be used for Owner Furnished Equipment (OFE))
52.247-58	Loading, Block and Bracing of Freight Car Shipments (Apr 1984)
52.247-61	F.O.B. Origin—Minimum Size of Shipments (Apr 1984)
52.247-65	F.O.B. Origin, Prepaid Freight—Small Package Shipments (Jan 1991)

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F-3 PERIOD OF PERFORMANCE

The period of performance shall commence on the date of the award and expire on TBA .

F-4 REPORTING REQUIREMENTS

Reporting requirements are found in the CDRL, Table 1.

Status meetings will be held either at the WHOI facility or via Webex (online meetings) to the extent possible.

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SECTION G – CONTRACT ADMINISTRATION DATA

G-1 Contractor's facility which will administer the contract:

MAILING ADDRESS:

Procurement Office
Woods Hole Oceanographic Institution
266 Woods Hole Rd
Woods Hole, MA 02543-1050

G-2 Invoices

- A. The contractor shall submit monthly original invoices (in duplicate) to:
Procurement Office
Woods Hole Oceanographic Institution
266 Woods Hole Rd
MS #1,
Woods Hole MA 02543
- B. Invoice must include:
 - 1) Name and address of contractor
 - 2) Contractor's DUNS #
 - 3) Invoice date and number
 - 4) Contract/Purchase Order number
 - 5) Description, quantity, unit of measure and unit price
 - 6) Terms of any discount for prompt payment
 - 7) Name and contact information of person to notify in event of defective invoice
 - 8) Costs delineated by CLIN and sub-CLIN
- C. Invoices will be processed five (5) days after acceptance by the Contract Project Manager.

G-3 Method of Payment

- A. All payments by the WHOI under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (b) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
- B. In the event WHOI is unable to release one or more payments by EFT, the Contractor agrees to either:
 - 1) Accept payment by check or some other mutually agreeable method of payment; or,
 - 2) Request WHOI to extend the payment due date until such time as WHOI can make payment by EFT.
- C. Contractor's EFT information. WHOI shall make payment to the Contractor using the EFT information provided to WHOI upon execution of this contract. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the WHOI.
- D. Mechanisms for EFT payment. WHOI shall make payment by EFT through the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association.

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G-4 Purchasing Office Representative

Mailing address

ATTN: Mr. Dennis Fox
Procurement Office
Woods Hole Oceanographic Institution, MS #1
266 Woods Hole Rd
Woods Hole, MA 02543-1050
dfox@whoi.edu

Contracting Officer/Procurement Director

Dennis Fox
Procurement Office
Woods Hole Oceanographic Institution, MS#1
266 Woods Hole Rd
Woods Hole, MA 02543-1050
dfox@whoi.edu

Contracting Officer's Technical Representative (COTR)

Bob Pettit
Woods Hole Oceanographic Institution, MS# 17
266 Woods Hole Rd
Woods Hole, MA 02543-1050
rpetitt@whoi.edu

Quality Assurance (QA)

Diana Wickman
Quality Assurance
Woods Hole Oceanographic Institution, MS# 57
266 Woods Hole Rd
Woods Hole, MA 02543-1050
dwickman@whoi.edu

(End of Section G)

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SECTION H – SPECIAL CONTRACT REQUIREMENTS

H-1 INDEMNIFICATION

Contractor shall indemnify, defend, and hold harmless WHOI and the other Procuring Organizations, and their respective members, directors, trustees, officers, and employees, against any and all claims, suits, legal actions, expenses, loss, and damage of any kind to person or property, arising out of or resulting from the use of the goods delivered under this contract, including but not limited to litigation costs and attorneys' fees.

H-2 ARBITRATION

Any dispute, controversy, or claim arising out of or relating to this contract or breach thereof which cannot be amicably settled between WHOI and the Contractor shall be finally settled by arbitration at the election of either party in accordance with the Rules of the American Arbitration Association by one or more arbitrators appointed in accordance with the said rules. The arbitration shall take place in the Commonwealth of Massachusetts. The arbitration award shall be final and binding on the parties, shall be in lieu of any other remedy, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator may, in his/her discretion, award to the prevailing party its expenses, including attorneys' fees, incurred in connection with the arbitration.

Any dispute, controversy, or claim arising out of or relating to a specific DO or breach thereof which cannot be amicably settled between the Procuring Organization and the Contractor shall be finally settled by arbitration at the election of either party in accordance with the Rules of the American Arbitration Association by one or more arbitrators appointed in accordance with the said rules. The arbitration shall take place in and be governed by specific state law governing the Procuring Organization. The resulting award shall be final and binding on the parties, shall be in lieu of any other remedy, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

H-3 LIMITATION OF DAMAGES

Under no circumstances shall WHOI, NSF, Ocean Leadership and/or the Procuring Organization be liable to the Contractor for any consequential damages, lost profits, delay damages, or other forms of damages beyond payment of units/services ordered.

H-4 LIABILITY

None of the following: WHOI, NSF, Ocean Leadership, or any of the Procuring Organizations named in Section C-1.3 can assume any liability for accidents, illnesses, injuries, or claims arising out of, or related to, any activities supported by this contract or for unauthorized use of patented or copyrighted materials. The Contractor is advised to take such steps as may be deemed necessary to insure or protect itself, its employees, and its property.

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H-5 LIABILITY INSURANCE

The Contractor shall be responsible for securing all necessary and applicable insurance coverage.

H-6 SUITS/CLAIMS AGAINST CONTRACTOR

Contractor shall give WHOI's Director of Procurement immediate notice in writing of any action or suit filed and prompt notice of any claim made against the Contractor which in the opinion of the Contractor may result in litigation.

H-7 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

1. The Contractor shall report to WHOI's Director of Procurement, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
2. In the event of any claim or suit against WHOI and/or a Procuring Organization on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to WHOI, when requested by the Director of Procurement, all evidence and information in the Contractor's possession pertaining to such claim or suit.
3. The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed \$150,000.
4. The Contractor shall indemnify WHOI, NSF, Ocean Leadership and the Procuring Organizations and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

H-8 PROVISIONS REGARDING USE OF DATA AND INFORMATION

H-8.1 Limitations on Use

All of the data delivered under this Contract shall be available for unrestricted dissemination and use in connection with the operation and use of the Fuel Cell by WHOI, Ocean Leadership, NSF, any and all of the Procuring Organizations, and the licensees or assigns of the foregoing. To the extent Contractor anticipates that it will be necessary to disclose proprietary instrument or system information proprietary data pursuant to nondisclosure restrictions, the nature of such data must be specifically identified in the Contract or DO, along with the reason for the imposition of non-disclosure restrictions, and the proposed terms and conditions of any proposed non-disclosure restrictions.

The parties shall not use, disclose or reproduce proprietary data that bears a restrictive legend, other than as required in the performance of this contract. This obligation shall not apply to information which (a) was in the receiving party's possession prior to receipt of the disclosed information; (b) is or becomes a matter of public knowledge through no fault of the receiving party; (c) is received from a third party without a duty of confidentiality; (d) is independently developed by the receiving party; (e) is disclosed under operation of law, provided that the disclosing party is provided reasonable notice and opportunity to contest the need for such disclosure, or to seek a protective order therefore.

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The Contractor shall provide the WHOI COTR with a copy of any proposed publication resulting from work performed pursuant to this contract at least thirty (30) days prior to submission for publication. WHOI shall have twenty (20) business days to review and nothing herein shall preclude the use of any data independently acquired by the Contractor without such limitations or prohibit an agreement at no cost to WHOI between the Contractor and the data owner which provides for greater rights to the Contractor.

H-8.2 Rights in Data Necessary for the Procurement, Operation, and Management of the OOI

In addition to the rights detailed under Section I.2.1 of this solicitation, the following shall apply:

1. The Contractor grants to WHOI, Ocean Leadership and the NSF in perpetuity the right to use all data delivered under the Contract, without charge or additional expense (except for whatever reasonable costs are incurred by Contractor to reproduce the data) as necessary for the design, fabrication, integration, installation, operation, and management of the OOI. This includes the right to make such data available to any party interested in competing for any subsequent award to operate and manage the OOI and any awardees the NSF selects as a result of these competitions. If Contractor includes any third-party data used under license (including, without limitation, any third-party software and documentation related thereto) in the deliverables, it shall identify such data in the Contract together with a warranty that it has the right to grant and does grant to WHOI, NSF and Ocean Leadership the irrevocable, non-exclusive, perpetual, worldwide, fully paid license, with rights to utilize such data, including, without limitation, software, tools, or other technology and all associated intellectual property rights that may be embedded in or associated with the deliverables without restriction, in the operation and use of the instrument, together with the right to assign and/or sublicense such rights without restriction including, without limitation, to NSF, the Procuring Organizations, and/or any other successor awardee operating and managing the OOI.
2. The types and kinds of data deemed necessary for the design, fabrication, integration, installation, operation, and management of the OOI includes, but is not limited to:
 - a. Maintenance guides and histories
 - b. Operating manuals and similar plans
 - c. User manuals and similar documents
 - d. Facility and instrument drawings (including design, shop and as-built drawings), designs, and specifications
 - e. Schematics
 - f. Warranty data
 - g. Schedules
 - h. Software
 - i. Inventories
 - j. Document indexes
 - k. Contracts, Lower Tier Awards, and vendor agreements (these items will be assessed by WHOI and the Contractor for the presence of any proprietary data prior to their release to a third party)

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1. Operations reports

Rights acquired by WHOI, Ocean Leadership and the NSF under this Section H-8.2 do not include rights to any data first produced solely for scientific research purchases. Licenses to use data not first produced under this Contract, including, without limitation, any third-party software, shall be identified in the Contract, and Contractor shall grant to WHOI, NSF and Ocean Leadership an irrevocable, non-exclusive, perpetual, worldwide, fully paid-up license to utilize all such data, including any and all software, tools or other technology that may be embedded in the instrument or otherwise provided to WHOI, NSF or Ocean Leadership in connection with the instrument, without restriction in the operation and use of the instrument. WHOI may assign or sublicense any or all of its rights to operate the instrument, including, without limitation, to any successor awardee operating and managing the OOI. For the avoidance of doubt, neither Contractor nor its licensors shall have any rights in or to data generated by or through the use of instrument by WHOI, Ocean Leadership, NSF, the Procuring Organizations, or the licensees or assigns of any of them.

Flow-down Requirements:

The requirements of Section H-8 will apply to all DOs issued under this IQC. The Contractor shall ensure that the requirements of Section H-8 flow down to all subcontractors, if any, to this Contract.

H-9 Intentionally left blank

H-10 CONTRACT MONITORING

In monitoring the Contractor's performance, WHOI is primarily interested in progress toward successful completion of each DO along with the financial status of the contract. During the course of performance of the resulting contract, WHOI (and authorized representatives including NSF and Ocean Leadership representatives) and including representatives from each ordering institution (IO/Procuring Organization) shall have the right, at all reasonable times, to make site visits to inspect or review the progress of work or the management control systems of the Contractor. The Contractor shall provide all reasonable facilities and assistance for the safety and convenience of the representatives in the performance of their duties, to include witnessing any Contractor tests conducted on the instruments being delivered to OOI under this IQC or any DO. Such access shall include, but not be limited to, the right to inspect the Contractor's financial accounts or records that pertain to this contract.

H-11 ACKNOWLEDGEMENT OF NSF SUPPORT

Advance notification of any public relations activities related to this contract shall be provided by the Contractor to the WHOI COTR and the relevant DO-issuing COTR, as applicable. NSF has reserved the right to review and/or co-issue any press releases issued by the Contractor and any Sub-Contractors. The Contractor and Sub-Contractors shall provide advance notification of any press or Congressional events or public relations activities related to this Contract to the WHOI COTR and the relevant DO-issuing COTR.

H-12 NOTICE OF LABOR DISPUTES

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract or any DO, the Contractor shall immediately give notice, including all relevant information, to the WHOI Director of Procurement. The Contractor agrees to insert the substance of this clause (H.12) in any subcontract to which a labor dispute may delay the timely performance of the contract.

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H-13 CHANGE-OVER AND PHASE-OUT

Contractor recognizes that WHOI may direct the assignment of this Contract and/or its Sub-Contractors to other organizations. The Contractor agrees to use its best efforts to effect an orderly and efficient transition from Contractor and/or Sub-Contractors to any assignee in the event of any such assignment.

H-14 RIGHT TO PROCURE FROM OTHER SOURCES

WHOI, under the terms of this IQC, retains the right to procure the same or similar goods and services from other sources during the period of this contract.

H-15 TAXES/DUTIES

Contractor must avail itself of any tax exemptions for which any activities supported by Federal funds may qualify, including any applicable exemptions from state or local sales and use taxes on the purchase of goods and services made with NSF award funds and/or by non-profit organizations.

H-16 PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to WHOI and/or the Procuring Organization, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occurs as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and Procuring Organization acceptance of the entire work.

H-17 F.O.B. DESTINATION

1. The term "f.o.b. destination," as used in this clause, means—
 - a. Free of expense to WHOI or another Procuring Organization, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and
 - b. Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. WHOI shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of WHOI acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the Contractor uses rail carrier or freight forwarded for less than carload shipments, the Contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

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2. The Contractor shall—
 - a. Pack and mark the shipment to comply with Contract specifications; or
 - b. In the absence of specifications, prepare the shipment in conformance with carrier requirements;
 - c. Prepare and distribute commercial bills of lading;
 - d. Deliver the shipment in good order and condition to the point of delivery specified in the Contract;
 - e. Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the Contract;
 - f. Furnish a delivery schedule and designate the mode of delivering carrier; and
 - g. Pay and bear all charges to the specified point of delivery.

H-18 WARRANTIES AND ACCEPTANCE UNDER PERFORMANCE SPECIFICATIONS OR DESIGN CRITERIA

(a) Definitions.

“Acceptance” means the act of an authorized representative of the Procuring Organization by which the Procuring Organization assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the Contract.

“Defect” means any condition or characteristic in any supplies or services furnished by the Contractor under the Contract that is not in compliance with the requirements of the Contract.

“Supplies” means the end items furnished by the Contractor and related services required under this Contract. Except when this Contract includes the clause entitled Warranty of Data, supplies also mean “data.”

(b) Contractor’s obligations.

(1) The Contractor’s warranties under this clause shall apply only to those defects discovered by either the Procuring Organization or the Contractor within 60 days following deployment. Note that deployment may take place up to 12 months following acceptance.

(2) If the Contractor becomes aware at any time before acceptance by the Procuring Organization (whether before or after tender to the Procuring Organization) that a defect exists in any supplies or services, the Contractor shall—

(i) Promptly correct the defect; or (ii) Promptly notify the Contracting Officer, in writing, of the defect, using the same procedures prescribed in paragraph (b)(3) of this clause.

(3) If the Procuring Organization’s CO determines that a defect exists in any of the supplies or services accepted by the Procuring Organization under this Contract, the Contracting Officer shall promptly notify the Contractor of the defect, in writing, within 30 days after discovery of the defect. Upon timely notification of the existence of a defect, or if the Contractor independently discovers a defect in accepted supplies or services, the Contractor shall submit to the Contracting Officer, in writing, within 30 days a recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.

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(4) The Contractor shall promptly comply with any timely written direction from the Contracting Officer to correct or partially correct a defect, at no increase in the Contract price.

(5) The Contractor shall also prepare and furnish to the Contracting Officer data and reports applicable to any correction required under this clause (including revision and updating of all other affected data called for under this Contract) at no increase in the Contract price.

(6) In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall submit a technical and cost proposal within 30 days to amend the Contract to permit acceptance of the affected supplies or services in accordance with the revised requirement, and an equitable reduction in the Contract price shall promptly be negotiated by the parties and be reflected in a supplemental agreement to this Contract.

(7) Any supplies or parts thereof corrected or furnished in replacement and any services re-performed shall also be subject to the conditions of this clause to the same extent as supplies or services initially accepted. The warranty, with respect to these supplies, parts, or services, shall be equal in duration to that set forth in paragraph (b)(1) of this clause, and shall run from the date of delivery of the corrected or replaced supplies.

(8) If the Procuring Organization returns supplies to the Contractor for correction or replacement under this clause, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the place of delivery specified in this Contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return to the place of delivery specified in this Contract. The Contractor shall also bear the responsibility for the supplies while in transit.

(9) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation under this Contract.

(c) Remedies available to the Procuring Organization.

(1) The rights and remedies of the Procuring Organization provided in this clause—

(i) Shall not be affected in any way by any terms or conditions of this Contract concerning the conclusiveness of inspection and acceptance; and (ii) Are in addition to, and do not limit, any rights afforded to the Procuring Organization by any other clause of this Contract.

(2) Within 30 days after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Procuring Organization's Contracting Officer, using sole discretion, shall give the Contractor written notice not to correct any defect, or to correct or partially correct any defect within a reasonable time at the manufacturer's facility.

(3) In no event shall the Procuring Organization be responsible for any extension or delays in the scheduled deliveries or periods of performance under this Contract as a result of the Contractor's obligations to correct defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the correction of defects unless provided by a supplemental agreement with adequate consideration.

(4) This clause shall not be construed as obligating the Procuring Organization to increase the Contract price.

(5)(i) The Procuring Organization's Contracting Officer shall give the Contractor a written notice specifying any failure or refusal of the Contractor to—

(A) Present a detailed recommendation for corrective action as required by paragraph (b)(3) of this clause;

(B) Correct defects as directed under paragraph (b)(4) of this clause; or

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(C) Prepare and furnish data and reports as required by paragraph (b)(5) of this clause.

(ii) The notice shall specify a period of time following receipt of the notice by the Contractor in which the Contractor must remedy the failure or refusal specified in the notice.

(6) If the Contractor does not comply timely with the Procuring Organization's Contracting Officer's written notice in paragraph (c)(5)(i) of this clause, the Contracting Officer may by Contract or otherwise—

(i) Obtain detailed recommendations for corrective action and either—

(A) Correct the supplies or services at Contractor's expense; or

(B) Replace the supplies or services at Contractor's expense, and if the Contractor fails to furnish timely disposition instructions, the Procuring Organization's Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Procuring Organization is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;

(ii) Obtain applicable data and reports; and (iii) Charge the Contractor for the costs incurred by the Procuring Organization.

(End of Section H)

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SECTION I – CONTRACT CLAUSES

I-1 RESERVED

I-2 NATIONAL SCIENCE FOUNDATION (NSF) COOPERATIVE AGREEMENT FLOW-DOWN TERMS AND CONDITIONS

This effort is funded under a cooperative agreement between WHOI, the Consortium for Ocean Leadership and the National Science Foundation. WHOI is responsible for complying with the conditions below and ensuring that the Contractor also complies with them.

The following NSF Terms and Conditions shall apply to this Contract:

Articles: 9, 23, 25, 28, 29, 32, 36, 38, 39, 40, 48 and 49, in the *NSF Cooperative Agreement Financial & Administrative Terms & Conditions, (CA-FATC)*, February 1, 2012, as amended over time, shall apply (in full text further below in Section I).

The CA FATC articles listed in full text below are incorporated herein and are made a part of this Contract, except that the clauses shall be appropriately interpreted to reflect the identities of the instant parties, i.e. substitute:

- a. “WHOI Director of Procurement” for “Grants Officer” or “Grants and Agreements Officer” or “Contracting Officer”;
- b. “WHOI Director of OOI” for “Principal Investigator” or “Project Director”
- c. “Prime Contractor” or “WHOI” or “Implementing Organization (IO)” or “Procuring Organization” for “Government” or “NSF
- d. “Subcontractor”, “Contractor” for “Awardee”, “Grantee”, or “Recipient”
- e. “Contract” for “Award” or “Grantee”
- f. “Director, OOI” for “NSF Deputy Director”

I-2.1 CA-FATC Article 9, Procurement Standards

Whether or not approval of a procurement is required under Article 8a, where appropriate, the awardee (including commercial organizations) is responsible for compliance with the procurement standards identified in 2 CFR §§ 215.40 through .48. The awardee also is responsible for ensuring that the appropriate NSF conditions from this award (including Article 26, Audit and Records) are made a part of any contract or other arrangement whose award amount exceeds the simplified acquisition threshold (currently \$150,000).

I-2.2 CA-FATC, Article 23, Copyrightable Material

a. Definition

Subject writing means any material that:

- 1. Is or may be copyrightable under Title 17 of the U.S.C.; and

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2. Is produced by the awardee or its employees in the performance of work under this award. Subject writings include such items as reports, books, journal articles, software, databases, sound recordings, videotapes, and videodiscs.

b. Copyright Ownership, Government License

Except as otherwise specified in the award or by this paragraph, the awardee may own or permit others to own copyright in all subject writings. The awardee agrees that if it or anyone else does own copyright in a subject writing, the Federal government will have a nonexclusive, nontransferable, irrevocable, royalty-free license to exercise or have exercised for or on behalf of the U.S. throughout the world all the exclusive rights provided by copyright. Such license, however, will not include the right to sell copies or phono-records of the copyrighted works to the public.

c. Awards Affected by International Agreements

If the award indicates it is subject to an identified international agreement or treaty, NSF can direct the awardee to convey to any foreign participant or otherwise dispose of such rights to subject writings as are required to comply with that agreement or treaty.

d. Awardee Action to Protect Government Interests

The awardee agrees to acquire, through written agreement or an employment relationship, the ability to comply with the requirements of the preceding paragraphs and, in particular, to acquire the ability to convey rights in a Subject writing to a foreign participant if directed by NSF under the previous paragraph. The awardee further agrees that any transfer of copyright or any other rights to a subject writing, by it or anyone whom it has allowed to own such rights, will be made subject to the requirements of this article.

I-2.3 CA-FATC, Article 25, Publications

a. Acknowledgment of Support

The awardee is responsible for assuring that an acknowledgment of NSF support:

1. is made in any publication (including World Wide Web sites) of any material based on or developed under this project, in the following terms: "This material is based upon work supported by the National Science Foundation under Grant No. (NSF grant number)."
2. is orally acknowledged during all news media interviews, including popular media such as radio, television and news magazines.

b. News Releases

The awardee is strongly encouraged to consult with and notify the NSF Program Officer or his/her designee prior to issuing news releases concerning NSF-supported activities.

c. Disclaimer

The awardee is responsible for assuring that every publication of material (including World Wide Web pages) based on or developed under this award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer: "Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Science Foundation."

d. Copies for NSF

The awardee is responsible for assuring that the cognizant NSF Program Officer is provided access to, either electronically or in paper form, a copy of every publication of material based on or

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developed under this award, clearly labeled with the award number and other appropriate identifying information, promptly after publication.

e. Metric System

All reports and publications resulting from this NSF award are encouraged to use the metric system of weights and measures.

I-2.4 CA-FATC, Article 28, Audit and Records

- a. Financial records, supporting documents, statistical records, and other records pertinent to this award shall be retained by the awardee for a period of three years from submission of the final project and expenditure reports specified in Articles 15 and 16.
 1. Records that relate to audits, appeals, litigation or the settlement of claims arising out of the performance of the project shall be retained until such audits, appeals, litigation or claims have been disposed of.
 2. Records relating to projects subject to special project income provisions shall be retained until three years from the end of the awardee's fiscal year in which the award requirement for reporting income expires.
- b. Unless court action or audit proceedings have been initiated, the awardee may substitute microfilm copies of original records.
- c. The Director of the National Science Foundation and the Comptroller General of the U.S., or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the awardee organization and of the performing organization, if different, to make audits, examinations, excerpts and transcripts. Further, any negotiated Contract in excess of the simplified acquisition threshold (currently \$150,000) made by the awardee shall include a provision to the effect that the awardee, the Director of the National Science Foundation, the Comptroller General of the U.S., or any of their duly authorized representatives, shall have access to pertinent records for similar purposes.
- d. In order to avoid duplicate record keeping, NSF may make special arrangements with the awardee to retain any records that are needed for joint use. NSF may request transfer to its custody of records not needed by the awardee when it determines that the records possess long-term retention value. When the records are transferred to, or maintained by NSF, the three-year retention requirement is not applicable to the awardee. In the rare event that this provision is exercised, NSF will negotiate a mutually agreeable arrangement with the awardee regarding reimbursement of costs.
- e. Awardees that are States, Local Governments or Non-Profit Organizations, shall arrange for the conduct of audits as required by OMS Circular A-133 "*Audits of States, Local Governments, and Non-Profit Organizations*" (including colleges and universities.) They shall provide copies of the reports of these audits to the cognizant Federal audit agency. Any Federal Audit of this project deemed necessary by NSF shall build upon the results of such audit(s).

I-2.5 CA-FATC, Article 29, Site Visits

NSF, through authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by NSF on the premises of the awardee or a Contractor under an award, the awardee shall provide and shall require its Contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in

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the performance of their duties. All site visits and evaluations shall be performed in such a manner that will not unduly delay the work.

I-2.6 CA-FATC, Article 32, Nondiscrimination

- a. The award is subject to the provisions of Title VI of the Civil Rights Act of 1964 [42 U.S.C. § 2000d], Title IX of the Education Amendments of 1972 [20 USC §§ 1681 et seq.], the rehabilitation Act of 1973 [29 U.S.C. § 794], the Age Discrimination Act of 1975 [42 U.S.C. §§ 6101 et seq], and all regulations and policies issued by NSF pursuant to these statutes. Specifically, in accordance with these statutes, regulations, and policies, no person on the basis of race, color, national origin, sex, disability, or age shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the award.
- b. By electronically signing a proposal, the Authorized Organizational Representative is providing the requisite Certification of Compliance with National Science Foundation Nondiscrimination Regulations and Policies. This Nondiscrimination Certification sets forth the nondiscrimination obligations with which all awardees must comply. These obligations also apply to subrecipients, subawardees, and subcontractors under the award. The awardee, therefore, shall obtain the NSF Nondiscrimination Certification from each organization that applies to be or serves as a subrecipient, subgrantee or subcontractor under the award (for other than the provision of commercially available supplies, materials, equipment or general support services) prior to entering into the subaward arrangement.

I-2.7 CA-FATC, Article 36, Clean Air and Water

(Applicable only if the award exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act [42 U.S.C. § 7413(c)(1)] or the Clean Water Act [33 U.S.C. § 1319(c)] and is listed by the Environmental Protection Agency (EPA), or the award is not otherwise exempt.)

The awardee agrees as follows:

- a. To comply with all the requirements of Section 114 of the Clean Air Act [42 U.S.C. §7414] and Section 308 of the Clean Water Act [33 U.S.C. § 1318], respectively, relating to inspection, monitoring, entry, reports and information, as well as other requirements specified in Section 114 and Section 308 of the Clean Air Act and the Clean Water Act, respectively, and all regulations and guidelines issued thereunder before the award of the cooperative agreement.
- b. That no portion of the work required by the award will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date that the award was awarded unless and until EPA eliminates the name of such facility or facilities from such listing.
- c. To use its best efforts to comply with clean air standards and clean water standards at the facility in which the award is being performed.
- d. To insert the substance of the provisions of this article into any nonexempt subcontract.

I-2.8 CA-FATC, Article 38, Investigator Financial Disclosure Policy

If the awardee employs more than 50 persons, the awardee shall maintain an appropriate written and enforced policy on conflict of interest consistent with the provisions of [AAG Chapter IV.A](#).

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I-2.9 CA-FATC, Article 39, State Sales and Use Taxes

Awardees are reminded that each set of cost principles cited in Article 12b limits the allowability of taxes to those the organization is required to pay. Awardees must avail themselves of any tax exemptions for which any activities supported by Federal funds may qualify, including any applicable exemptions from state or local sales and use taxes on the purchase of goods and services made with NSF award funds.

I-2.10 CA-FATC, Article 40, Debarment and Suspension

Recipients shall fully comply with the requirements stipulated in Subpart C of 45 CFR Part 620, entitled "*Responsibilities of Participants Regarding Transactions.*" The recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 45 CFR Part 620, entitled "*Covered Transactions,*" includes a term or condition requiring compliance with Subpart C. The recipient also is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transaction. The recipient acknowledges that failing to disclose the information required under 45 CFR § 620.335 may result in the termination of the award, or pursuance of other available remedies, including suspension and debarment. Recipients may access the Excluded Parties List System at <http://epls.arnet.gov>.

I-2.11 CA-FATC, Article 48, Sense of the Congress on the Use of Funds

Recent Acts making appropriations to NSF provide "It is the sense of the Congress, that, to the greatest extent practical, all equipment and products purchased with funds made available in this Act should be American-made" and require the Foundation to notify awardees of that statement."

I-2.12 CA-FATC, Article 49, Increasing Seat Belt Use in the United States

In accordance with Executive Order 13043, *Increasing Seat Belt Use in the United States*, dated April 16, 1997, "grantees are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles."

I-3 RESERVED

I-4 OTHER CLAUSES

In the below clauses, the term "Procuring Organization" refers to any and all of those institutions named in Section E.1 of this solicitation.

I-4.1 Indefinite Quantity Contract

- a. This is an indefinite-quantity Contract (IQC) for any ordered supplies or services specified, and effective for the period stated. The quantities of supplies and services specified in this solicitation are estimates only and neither WHOI nor any other Procuring Organization shall be obligated to purchase any supplies or services from Contractor beyond the minimum order amount.
- b. Delivery or performance shall be made only as authorized by orders issued in accordance with Section F of this RFP. The Contractor shall furnish to the Procuring Organizations, when and if ordered, the supplies or services estimated in Section B of this solicitation and specified in each DO up to and including the quantity designated in Section B as the "maximum." The Procuring Organizations, as a group, will order at least the quantity of supplies or services designated in Section B as the "minimum."

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- c. There is no limit on the number of orders that may be issued. WHOI or any of the Procuring Organizations may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- d. Any order issued during the effective period of this Contract shall be completed within the authorized period of performance of the Contract.

I-4.2 Order of Precedence

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- a. The schedule (excluding the specifications)
- b. Representations and other instructions
- c. Contract clauses
- d. Other documents, exhibits, and attachments
- e. The specifications

I-4.3 Availability of Funds

Funds are not presently available for the entirety of the expected maximum ceiling for this contract. WHOI's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of WHOI and/or a Procuring Organization for any payment beyond the minimum contract order stipulated in Section B.3 of the RFP may arise until funds are made available to the WHOI Director of Procurement for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by WHOI Director of Procurement.

I-4.4 Fixed Price – Changes

- a. The WHOI Director of Procurement may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
 1. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for WHOI in accordance with any provided drawings, designs, or specifications
 2. Method of shipment or packing
 3. Place of inspection, delivery, or acceptance
- b. If any such change causes an increase or decrease in the cost of, or time required for, performing this contract, whether or not changed by the order, the WHOI Director of Procurement shall make an equitable adjustment in—
 1. The contract price, the time of performance, or both; and
 2. Other affected terms of the contract, and shall modify the contract accordingly.
- c. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the WHOI Director of Procurement decides that

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the facts justify it, the WHOI Director of Procurement may receive and act upon a proposal submitted before final payment of the contract.

- d. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the WHOI Director of Procurement shall have the right to prescribe the manner of the disposition of the property.
- e. Failure to agree to any adjustment shall be a dispute subject to Arbitration. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

I-4.5 Responsibility for Supplies

- a. Title to supplies furnished under this contract shall pass to the Procuring Organization upon formal acceptance, regardless of when or where the Procuring Organization takes physical possession.
- b. Risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Procuring Organization upon, acceptance by the Procuring Organization or delivery of the supplies to the Procuring Organization at the destination specified in the DO, whichever is later, since transportation is f.o.b. destination.
- c. Paragraph (b) of this clause shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this clause shall apply.
- d. Under paragraph (b) of this clause, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Procuring Organization acting within the scope of their employment.

I-4.6 Termination

Termination for Convenience

- a. WHOI may at any time terminate performance of work under this contract in whole or, from time to time, in part. The WHOI Director of Procurement shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- b. After receipt of a Notice of Termination, and except as directed by the WHOI Director of Procurement, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - 1. Stop work as specified in the notice.
 - 2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - 3. Terminate all subcontracts to the extent they relate to the work terminated.
 - 4. Assign to WHOI, as directed by the WHOI Director of Procurement, all right, title, and interest of the Contractor under the subcontracts terminated, in which case WHOI shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

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5. With approval or ratification to the extent required by the Director of Procurement, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

Termination for Default

- a. 1. WHOI may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—
 - (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
 - (ii) Make progress, so as to endanger performance of this contract (but see paragraph a.2 of this clause); or
 - (iii) Perform any of the other provisions of this contract (but see paragraph a.2 of this clause).
2. WHOI's right to terminate this contract under subdivisions a.1(ii) and a.1(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the WHOI Director of Procurement) after receipt of the written notice from the WHOI Director of Procurement specifying the failure.
- b. If WHOI terminates this contract in whole or in part, it may acquire, under the terms and in the manner the WHOI Director of Procurement considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Procuring Organization for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- c. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of WHOI in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- d. If the failure to perform is caused by the default of a Subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- e. If this contract is terminated for default, WHOI may require the Contractor to transfer title and deliver to the Government, as directed by the Director of Procurement, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the WHOI Director of Procurement, the Contractor shall also protect and preserve property in its possession in which WHOI has an interest.
- f. The Procuring Organization shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer of the Procuring Organization shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Procuring Organization may withhold from these amounts any sum the Contracting Officer

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determines to be necessary to protect WHOI and/or the Procuring Organization against loss because of outstanding liens or claims of former lien holders.

- g. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of WHOI.
- h. The rights and remedies of WHOI and/or the Procuring Organization in this clause are in addition to any other rights and remedies provided by law or under this contract.

I-4.7 Stop Work Order

- a. The WHOI Director of Procurements may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the WHOI Director of Procurements shall either—
 - 1. Cancel the stop-work order; or
 - 2. Terminate the work covered by the order as provided in the Default, or the Termination for Convenience, clause of this contract.
- b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The WHOI Director of Procurement shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—
 - 1. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - 2. The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the WHOI Director of Procurement decides the facts justify the action, the WHOI Director of Procurement may receive and act upon the claim submitted at any time before final payment under this contract.
- c. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of WHOI, the WHOI Director of Procurement shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- d. If a stop-work order is not canceled and the work covered by the order is terminated for default, the WHOI Director of Procurement shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

I.4.8 Risk of Loss

Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Procuring Organization upon delivery of the supplies to the Procuring Organization at the destination specified in the contract.

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I-4.9 Title

Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Procuring Organization upon acceptance, regardless of when or where the Procuring Organization takes physical possession.

I-4.10 Other Compliances

The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract. *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

I-4.11 Central Contractor Registration

Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from WHOI's and/or the Procuring Organization's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

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SECTION J – LIST OF ATTACHMENTS

The following document(s), exhibit(s), and other attachment(s) form a part of this contract:

- Attachment #1 Fuel Cell Specification, 3309-00046 rev 1-00, dated Oct. 9, 2012.
- Attachment #2 Interface Control Document – Fuel Cell to Power System Controller (ICD to be developed with successful offeror after award)
- Attachment #3 Fuel Cell Test Verification Matrix – will be added to 3309-00046 (Attachment 1) after award upon mutual agreement between WHOI and the Contractor
- Attachment # 4 – NSF Cooperative Agreement Financial & Administrative Terms & Conditions, (CA-FATC), dated 01/04/2010, as amended over time; Articles 5, 9, 10, 12, 19, 21,22, 23, 24, 25, 28, 32, 34, 35, 36, 40, 42, 43, 44 and 45 only apply.
- Attachment # 5 – NSF American Recovery and Reinvestment Act of 2009 Terms and Conditions (ARRA) (Public Law 111-5), dated May 2009, as amended over time; Articles 1, 2, 3, 4, 5 and 6 apply.
- Attachment #6 – Reserved
- Attachment # 7 – Certification of Current Cost
- Attachment # 8 – Cost Summary: to be provided by successful bidder
- Attachment #12 – Buoy/Fuel Cell Interface Control Drawing 3701-00313 Rev. B (ICD to be developed with successful offeror after award)

Table 1: Contract Data Requirements List

Exhibit A: Certifications (to be submitted with proposal)

Attachments 4 and 5, and FAR clauses cited throughout this document are incorporated herein and are made a part of this contract except that the clauses shall be appropriately interpreted to reflect the identities of the instant parties, i.e. substitute:

“WHOI Contracting Officer” for “Grants Officer”, “Program Officer”, “ACO”

“WHOI” for “Government” or “NSF”;

“Lower Tier Awardee”, “Subcontractor”, “Subgrantee” for “Contractor”, “Awardee”, “Grantee” or “Recipient”;

“Lower Tier Award”. “Subcontract”, “Subaward” or “Subgrant” for “Contract, “Award” or “Grantee”;

“WHOI COTR” for “COTR”.

(End of Section J)

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SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

K-1 Offeror Representations and Certifications

The Offeror certifies that (i) all Representations and Certifications contained in the solicitation and offer are complete, current, and accurate as required, and, (ii) the Offeror is aware that award of any subsequent contract shall be considered to have incorporated the applicable Representations and Certifications by reference.

K-2 Taxpayer Identification

a. Definitions

“Common parent,” as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Offeror is a member.

“Taxpayer Identification Number (TIN),” as used in this provision, means the number required by the IRS to be used by the Offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

- b. All Offerors are required to submit the information required in paragraphs (d) through (f) of this provision in order to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, and 6041A, and 6050M and implementing regulations issued by the IRS. If the resulting contract is subject to reporting requirements described in FAR 4.904, the failure or refusal by the Offeror to furnish the information may result in a 31 percent reduction otherwise due under the contract.
- c. The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the Offeror’s relationship with the Government (31 U.S.C. 7701(c) (3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the Offeror’s TIN.

d. Taxpayer Identification Number (TIN)

- TIN: _____.
- TIN has been applied for.
- TIN is not required because:
- Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.
- Offeror is an agency or instrumentality of a foreign government.
- Offeror is an agency or instrumentality of the Federal Government.

e. Type of organization

- Sole proprietorship
- Partnership
- Corporate Entity (not tax-exempt)
- Corporate Entity (tax-exempt)
- Government Entity (Federal, State or local)
- Foreign Government
- International Organization per 26 CFR 1.6049-4
- Other

f. Common Parent

- Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

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Name and TIN of common parent:
Name: _____
TIN: _____

K-3 Certification Regarding Debarment, and Other Responsibility Matters

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 Subaward of contracts by any Federal agency.
 - b. Have Have not within a 3-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 Subaward; 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, or receiving stolen property; and
 - c. Are Are not presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.
- (ii) The Offeror has has not within a 3-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

2. "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, 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.

- a. The Offeror shall provide immediate written notice to the CO if, at any time prior to contract Subaward, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- b. A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of a Subaward 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 non-responsible.
- c. 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.
- d. The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making Subaward. 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.

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K-4 Drug-Free Workplace Certification

- a. The Contractor certifies that it will provide a drug-free workplace by: Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b. Establishing a drug-free awareness program to inform employees about—
 1. The dangers of drug abuse in the workplace;
 2. The Contractor's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation and employee assistance programs, and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- c. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (a);
- d. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the Contract, the employee will:
 1. Abide by the terms of the statement; and
 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after each conviction;
- e. Notifying Ocean Leadership within ten days after receiving notice under subparagraph (d.2) from an employee or otherwise receiving actual notice of such conviction;
- f. Taking one of the following actions, within 30 days of receiving notice under subparagraph (d.2), with respect to any employee who is so convicted—
 1. Taking appropriate personnel action against such an employee, up to and including termination; or,
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- g. Making a good faith effort to continue to maintain a drug-free workplace through of paragraphs (a), (b), (c), (d), (f) and (g).

K-5 Certification Regarding Lobbying Instructions on Certification Regarding Lobbying

This certification is required for an award of a Federal contract, grant or cooperative agreement exceeding \$100,000 and for an award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

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3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements and that all subcontractors shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

K-6 Certification Regarding Conflict of Interest Policies

The Offeror hereby certifies that the Contractor has implemented and is enforcing a written policy on conflicts of interest, consistent with the provisions of Award Administration Guide (AAG) Chapter IV.A; that, to the best of his/her knowledge, all financial disclosures required by the conflict of interest policy were made; and that conflicts of interest, if any, were, or prior to the institution's expenditure of any funds under the award, will be, satisfactorily managed, reduced, or eliminated in accordance with the institution's conflict of interest policy. Conflicts that cannot be satisfactorily managed, reduced, or eliminated must be disclosed to WHOI.

http://www.nsf.gov/pubs/policydocs/pappguide/nsf10_1/aagprint.pdf

K-7 Certification Regarding Nondiscrimination

By submitting this proposal, the Authorized Organization Representative (AOR) is providing the Certification Regarding Nondiscrimination contained in Exhibit II-6 of the Grant Proposal Guide. http://www.nsf.gov/pubs/policydocs/pappguide/nsf10_1/gpprint.pdf

K-8 Intentionally left blank

K-9 Certification for Authorization for Organizational Representation or Individual Proposer

By submitting this proposal and signing below, the AOR is hereby: 1) certifying that statements made herein are true and complete to the best of his/her knowledge; and (2) agreeing to accept the obligation to comply with applicable NSF award terms and conditions if an award is made as a result of this proposal. Further the Offeror is hereby providing certifications regarding debarment and suspension, drug-free workplace, lobbying activities, and nondiscrimination as set forth in the NSF Proposal and Award Policies & Procedures Guide, Part I: The Grant Proposal Guide (GPG) (NSF 10-1). Willful provision of false information in this proposal and its supporting documents or in reports required under an ensuing award is a criminal offense (U.S. Code, Title 18, Par. 1001).

Signature of AOR

Name of AOR and Date

K.10. Certification Regarding Organizational Conflict of Interest

The purpose of this form is to grant Offerors an opportunity to disclose any actual or potential organizational conflicts of interest. A disclosed Conflict of Interest will not automatically result in the Offeror being removed from consideration. Mark the appropriate boxes that pertain to you and your organization for this RFP as well as providing any needed explanations.

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(a) Conflicts of Interest

A conflict of interest occurs when someone in a position of trust has competing professional or personal interests and these competing interests make it difficult to fulfill their professional duties impartially. A conflict of interest exists even if no unethical or improper act results from it. Conflicts of interest may be actual or perceived. An actual conflict of interest occurs when a decision or action would be compromised without taking immediate appropriate action to eliminate the conflict. A perceived conflict of interest is any situation in which a reasonable person would conclude that conflicting duties or loyalties exist.

(b) Organizational Conflicts Of Interest

An organizational conflict of interest occurs when: a contractor is unable or potentially unable to provide impartial contract performance due to competing duties or loyalties; a contractor's objectivity in carrying out the contract is or might be otherwise impaired due to competing duties or loyalties; or a contractor has an unfair competitive advantage through being furnished unauthorized proprietary information or source selection information that is not available to all competitors/Offerors. All Offerors must provide a list of all relationships with the Procuring Organizations that create, or may appear to create, a conflict of interest with the work that is contemplated in this Request for Proposal. The list shall indicate the relationship and a description of the conflict.

I certify that I have read and understand the description of organizational conflict of interest above and (check one of the following two boxes):

- Based on the criteria and description above, I do not have any conflicts of interest.
- Based on the criteria and description above, I have an actual or potential conflict of interest, or the appearance of a conflict of interest, which I am listing immediately below.

Name/Relationship and/or Description of the Conflict of Interest (attach additional pages if needed):

(c) Certification

The Offeror warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. The Offeror agrees that if after award a conflict of interest is discovered, an immediate and full disclosure in writing shall be made to the Contracting Officer. The disclosure shall include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If a conflict of interest is determined to exist the award may be canceled at the discretion of the Contracting Officer. In the event the Offeror was aware of an organizational conflict of interest prior to the award and did not disclose the conflict, the Contracting Officer may terminate the award for default.

Printed Name: _____

Offeror's Authorized Representative Title: _____

Signed Date: _____

Signature: _____

(End of Section K)

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SECTION L - INSTRUCTIONS, CONDITIONS AND NOTICES TO BIDDERS

L-1 General Instructions

L-1.1 General Proposal Instructions

- a. Offerors should examine the entire solicitation. Failure to do so shall be at Offeror's own risk. Proposals shall be submitted per instructions as detailed in this section.
- b. Offeror's Proposals must contain Technical, Management, Past Performance, and Cost/Price volumes as described below. In the event the Offeror's Proposals are considered to be unreasonable, WHOI reserves the right to ask for further information or to not award this contract.
- c. The Cost and Technical volumes shall be based on the requirements contained in this RFP (including those documents, exhibits, and other attachments to the RFP identified in Section J). The Offeror shall submit all information required by this RFP.
- d. Documents, exhibits, and other attachments that form a part of this RFP and which will become part of any resultant contract are identified in Section J. Documents and attachments, which form a part of this RFP but will not become a part of any resultant contract, should not be submitted with the Offeror's proposal. Those documents and attachments to be excluded from the proposal are:

Section L – Instructions, Conditions, and Notices to Offerors

Section M – Evaluation and Award Factors

- e. Offerors must comply with specific information submission requirements found in Section L and Section M. Failure of the Offeror to comply with all aspects of solicitation requirements located within the "Cost" section may render the proposal non-responsive and the Offeror may be removed from competition.
- f. Evaluation Categories are explained in Section M, including the Cost and Technical volumes sections. Cost is comprised of three (3) factors: CLINs 0001 and 0002, plus the NTE price of CLIN 0003. Technical is comprised of six (6) factors: 1) Technical Approach, 2) Producibility Plan, 3) Schedule, 4) Maintenance and Refurbishment, 5) Test/Quality Assurance System and, 6) Ancillary Items. *If needed, an additional Discussion/Final Proposal Revision will be requested of some offerors.*
- g. Offerors are expected to reach a reasonable understanding of the requirements of this RFP by careful study (particularly Section C—Descriptions/Specifications and Section J—List of Documents, Exhibits, and Other Attachments) and by the application of qualified knowledge and experience. If such a review establishes the need for correction or clarification, such information should immediately be brought to the attention of the WHOI Contracting Officer so that the matter can be resolved and so that, if necessary, official dissemination of such information can be made to all Offerors.
- h. Proposal Structure
 - 1. Paragraph Numbering: Paragraph numbering shall coincide with the numbering system of this document.
 - 2. The Offeror shall structure the proposal such that information provided for each section is as comprehensive as possible. The information provided for each section should be sufficiently self-contained to minimize the need to refer to other proposal sections for

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evaluation purposes. If cross-references are needed, page and paragraph numbers shall be included.

3. The solicitation provides information upon which the Technical section should be based.
 4. Section M of this solicitation outlines evaluation factors for award and their relative importance.
- i. General Requirements
1. Four volumes: Volume I (Technical), Volume II (Management), Volume III (Past Performance), and Volume IV (Cost/Price) are required. During the course of evaluating the Cost and Technical sections, the CO will compare data within each Offeror's Cost and Technical sections to verify consistency. Any inconsistencies may be viewed as weaknesses in the proposal. Timeliness of receipt of proposals will be determined based on the time of receipt at the WHOI location.
 2. To ensure that each Offeror's proposal is uniformly formatted, the following rules apply for the preparation of proposals. The proposals must be presented in two electronic files: Volumes I-III (Un-costed) - Technical, Management, and Past Performance; and, Volume IV – Cost. Additionally include in each electronic file, attachments (numbered) and spreadsheets or exhibits as required. Both files are to be formatted in Microsoft Word, Excel and/or other Microsoft Office Professional products. If .pdf files are required, margins may not exceed 1.5 inches.
 3. The pages are to be typewritten or printed, single-spaced, single-sided with no reductions, on standard 8-1/2" x 11" paper. The proposals must be prepared using Arial type font and be no smaller than 12-point. Margins shall be a minimum of one-inch top, bottom and both sides.
 4. Offerors are cautioned that WHOI intends to award a contract on the basis of initial proposals received, without discussions; therefore, each proposal shall contain the Offeror's best terms from a cost and technical standpoint.
- j. Solicitation Responsiveness. Offerors are advised to submit proposals that are complete and clear in all respects without the need for additional explanation or information. Offerors are cautioned against the use of general, vague, or unsubstantiated statements, which prevent concise proposal evaluations. Each factor will be evaluated on how well the response meets the requirements of the solicitation. The response that completely addresses all of the solicitation requirements may be judged superior to the response that minimally addresses solicitation requirements under evaluation factors.

L-2 Proposal Submission Requirements

L-2.1 General Proposal Organization

The Offeror shall prepare its proposal as set forth in the following paragraphs. To be considered compliant and eligible for award, the proposal shall, at a minimum, include the information identified in these Instructions to Offerors and comply with the cited page limitations for each section. Non-conformance with the specified organization, content, and page limitations may result in the rejection of the proposal as non-compliant. Page limitations shall be treated as maximums. If exceeded, the excess pages will not be read or considered in the evaluation of the proposal.

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Offerors' proposals shall contain the following four volumes:

Volume 1	Technical	20 page maximum limit
Volume 2	Management	10 page limit maximum
Volume 3	Past Performance	5 page limit maximum
Volume 4	Cost/Price	No page limit

In the event the Offeror's Proposals are considered to be inadequate or non-responsive, the Procuring Organization reserves the right to ask for further information or not to award this contract.

L-2.2 Proposal Copies

Hard copies and CD ROM/DVD of the proposal volumes shall be submitted to the Procuring Organization's designated POC (as listed in Section A-1) via regular mail or FEDEX. In the event of any discrepancy between the CD and hard copy, the signed hard copy shall take precedence. Un-costed hard copy Volumes I-III (Technical, Management and Past Performance) can be submitted in the same binder and CD. Volume IV Cost/Price must be submitted in a separate binder and a separate CD. Cost or pricing data shall NOT be included outside of the Cost Volume. For the CD copies, each file shall be contained on a separate CD ROM/DVD labeled with the Offeror name, Volume number, and title (consistent with Section L-1.1, i.2).

Offerors shall submit:

Volume	Title	<u>No. of</u> "Paper Originals"	<u>No. of</u> "Paper Copies"	<u>No. of</u> "CDs"
I	Technical	}	1	2
II	Management			
III	Past Performance			
IV	Cost/Price	1	2	2

Note: The CDs must be scanned for computer viruses.

Submission shall be made to:

ATTN: Mr. Dennis Fox,
Director of Procurement
MS#1, Woods Hole Oceanographic Institution
266 Woods Hole Rd.
Woods Hole, MA 02543-1050

1. In the event you prefer to hand carry your proposal to the Director of Procurement, ensure adequate time has been allowed by your representative to accommodate any additional procedures.
2. Offerors shall mark all submittals "DO NOT OPEN PACKAGE IN MAIL ROOM—CONTACT Mr. Dennis Fox, Phone (508) 289-2361. The outside of the package shall clearly indicate the Offeror's name, solicitation identification and contents of package.
3. Originals may be shipped in the same boxes as the copies to eliminate excess shipping costs. However, originals should be separately wrapped inside the container, and clearly labeled "ORIGINAL TECHNICAL VOLUME AND COPIES" or "ORIGINAL COST VOLUME AND COPIES" or "COST SUPPORTING DATA, etc." The exterior of each box MUST clearly indicate its contents.

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- a. All proposals (originals and copies) shall be prepared on 8-1/2" x 11" paper and placed into three-ring binders.

NOTE: Timeliness of receipt of proposals will be determined based on the time of receipt at the WHOI location.

- b. Cover pages on each proposal shall clearly identify the volume. Proposal cover pages, table-of-contents, fold-outs such as design drawings, circuit diagrams, and flow-process charts, resumes, labor category descriptions and acronym list are excluded from the proposal page count limits stated in Section L-2. 1. Company marketing materials and profiles are not needed and will not be evaluated.

L-3 Period of performance

The base period of performance for this contract is 24 months.

L-4 Subcontract Information

Offerors shall provide all necessary information for the contemplated purchase when requesting proposals from prospective Sub-Contractors. WHOI will not advise or consult with prospective Sub-Contractors as to the requirements of their transactions with Offerors, nor will respond to direct inquiries from prospective Sub-Contractors concerning clarifications of specification or solicitation requirements. ALL SUCH REQUESTS FOR CLARIFICATION MUST BE SUBMITTED TO WHOI THROUGH THE PRIME CONTRACTOR (OFFEROR).

In addition to the above, each significant Sub-Contractor and/or team member shall provide a cost proposal for its portion of the proposal. Cost proposals shall provide the estimating rationale required by the cost proposal requirements provision. Significant Sub-Contractor and/or team member cost proposals shall also include supporting data breakdowns.

A significant Sub-Contractor is defined as one providing effort consisting of five percent (5%) of total direct dollars, AND/OR ten percent (10%) of total man-hours.

The significant Sub-Contractor and/or team member cost proposals referenced in the preceding paragraph shall be included in the Offeror's required submission to the Procuring Organization, as described in the Section A-1. The cost proposals may be submitted to the Prime Contractor (Offeror) directly and to the Procuring Organization under separate cover, but must be received no later than due date of proposals.

If the Prime Contractor's estimate is different from the submitted Sub-Contractors' estimate for the same effort, the Prime Contractor must clearly justify this difference.

L-5 Owner Furnished Property (OFP)

None.

L-6 Organizational Conflict of Interest (OCI) Certification

The Offeror shall comply with the Conflict of Interest Certification requirements identified in Section K-6 and provide (if necessary) a Conflict of Interest Avoidance or Mitigation Plan.

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L-7 Offeror Points of Contact

The Offeror shall indicate their responsible/authorized POC in the beginning of each proposal volume. The POC must be authorized to hold discussions and negotiations with the Procuring Organization and shall have full authority to bind the Offeror to a contract. The Offeror shall also provide a POC who will be responsible for reviewing any applicable performance evaluation reports rendered by the Procuring Organization. POC information required includes: First name, last name, title, e-mail address, phone number, Fax number, and level of authority.

L-8 Proposal Content

L-8.1 Non-Cost/Price Proposal Content (Technical Volume)

The Offeror's non-cost/price proposal volumes (I-Technical, II-Management, III-Past Performance) shall clearly state and reflect how the Offeror proposes to comply with the performance and requirements identified in the Fuel Cell specification and the Statement of Work, Section C. The proposal volumes, including any supporting documentation, should be clear, concise and focused on responding to the requirements. None of the non-cost proposals shall include or identify any of the proposed prices; however, they shall contain resource information (such as staffing levels) as called for by the instructions set forth in this RFP. The overall level of effort and support proposed must be consistent with the stated contract solution in the proposal. The proposal must fully document and substantiate a cross mapping of the cost approach as it relates to the non-cost/price volume. Any revisions to the non-cost portions of the proposal made by the Offeror after its initial submittal shall be accomplished by replacement pages. Changes from the original page shall be indicated on the outside margin by vertical lines adjacent to the change. The Offeror shall include the date of the amendment on the lower right corner of the changed pages.

L-8.2 Volume I – Technical

A Technical section is required from each Offeror and will be evaluated as specified in Section M. The Offeror shall include in this volume discussion in sufficient detail to allow assessment of its ability to accomplish the solicitation requirements, including the baseline and options.

The Offerors shall provide information organized in the following parts:

Total Page limit – 20

- a. Cover letter: Page limit – 1
- b. Table of Contents: Page limit – 1
- c. Technical Sections: Page limit – Not to exceed 20 pages for Volume I
 1. Technical Approach
 2. Producibility Plan
 3. Schedule
 4. Maintenance and Refurbishment
 5. Test/Quality Assurance System
 6. Ancillary Items
- d. If necessary, further discussions and/or a request for a Final Proposal Revision may be requested.

The WHOI CO reserves the right to request such additional information regarding capabilities as may be necessary to determine the Offeror's qualifications for award of a contract or to clarify any aspect of the proposal.

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Offerors should note that if awarded a contract based upon this solicitation, the Offeror's Technical Volume or portion thereof, may be incorporated into the contract by reference.

Release of Technical Information: All technical information submitted pursuant to this clause is for the exclusive use of WHOI representatives, the CGSN Implementing Organization (IO), Source Selection Committee, Ocean Leadership, and appropriate NSF personnel. Technical information will be treated as business confidential and will not be publicly disclosed, provided that, where a request for disclosure of such technical information is submitted to WHOI pursuant to the Freedom of Information Act (5 U.S.C. 552a), WHOI will not disclose the Offeror's technical information if public disclosure of information would substantially harm the Offeror in its competitive position. In the order to help ensure non-disclosure, the title page of the technical proposal and other sheets of proposal data should be marked "TECHNICAL INFORMATION – NOT TO BE PUBLICLY DISCLOSED".

The technical proposal should be enclosed in a sealed envelope also marked "TECHNICAL INFORMATION – NOT TO BE PUBLICLY DISCLOSED".

CAUTION: Technical Volume should contain brief statements of fact rather than wordy, generalized narratives.

The Technical Volume shall consist of no more than 20 pages. Offerors are cautioned that no more than the first 20 pages of Technical section will be evaluated. Any portion of a Technical section which exceeds the 20 pages will not be evaluated. Each single sided piece of paper shall be counted as one page toward the 20-page limit except for the following items:

1. The first page of the Technical volume shall be a title page with only basic information, including: volume number and category name; the solicitation number; the name of the contract, Offeror's name; the full name and address designation of the WHOI representative; and the Offeror's position regarding disclosure of proposal data. No pages will be evaluated which are placed before this page.
2. The next page shall be the table of contents for the Technical volume.
3. Any pages in the proposal used solely for the purpose for separating sections of the proposal.

The Technical volume shall consist of six (6) parts: 1. Technical Approach, 2. Producibility Plan, 3. Schedule, 4. Maintenance and Refurbishment, 5. Test/Quality Assurance System, and 6. Ancillary Items. A separate Discussion/Final Proposal Revision section may be requested of vendors based upon their offer. Each part shall be appropriately marked and separated. The Technical Volume shall be separated from the Cost Proposal and shall not contain Cost information.

Exhibits included in the Technical Volume and exceeding a 20-page total allowance will not be considered. Each single side piece of paper is one page. Exhibits are restricted to standard 8-1/2" x 11" paper, (including items such as: facility layout, organizational charts, etc). Exhibits must not contain any text other than simple explanations pertinent to the exhibit.

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A. Technical Approach

The proposal shall demonstrate the Offeror's capabilities in the following:

1. Complete and include Enclosure 1 to Section L (details listed below in subsection G) listing capabilities of the Fuel Cell units, clearly showing where non-recurring engineering work is needed; the current capability and technical approach; and, a description of the approach to enhance the existing product to meeting the requirements.
2. Complete and include Section L Enclosure 2 (details listed below in subsection G) listing the Make and Model of auxiliary hardware including systems for fuel storage, thermal management, ventilation and exhaust. A description of the effort required to integrate the auxiliary hardware in accordance with Section J Attachment #12 should be provided.
3. Provide a Form and Fit description of the payload space, weight and power delivery of the complete Fuel Cell system including location and mounting method for all major components. Provide an assessment of the ability of the complete Fuel Cell system to meet all environmental requirements during a seagoing deployment.
4. Provide details describing field operation and deployment including fueling, powerup and powerdown, storage, assembly and disassembly, safety issues, etc.

B. Producibility Plan

The offeror will develop a NTE Price Estimate for the production of 10 Fuel Cell systems over a two year period. The Fuel Cells shall be complete systems with the ventilation, exhaust, heat exchanger and fuel storage systems installed and integrated. The offerors will demonstrate their plan for producing these units within this estimate. This plan will include, but not be limited to, man hour estimates and material estimates. Risks associated with the plan and their mitigation strategies will be described.

C. Schedule

The offeror shall develop a Project schedule showing how the milestones of Section F will be accomplished.

D. Maintenance and Refurbishment

If the offeror has performed maintenance and refurbishment for the Fuels Cells, this section will discuss the offeror's capabilities and experience. The capacity of the maintenance and refurbishment activity shall be characterized (x units/time). The estimated operational life and refurbishment cycles will be used to assess cost of ownership and life cycle cost.

E. Test/Quality Assurance System

The offeror shall describe their approach to testing during manufacturing and indicate whether tests are samples or 100%. The offeror shall also describe design verification testing approach as Fuel Cell subsystems are integrated.

Offerors shall provide a statement indicating ISO-9001 standing.

The offerors will complete Enclosure 1 to Section L (will become Section J, Attachment #6 of the Contract) Compliance Matrix for Fuel Cell, and include in their proposal describing how they will verify

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that their system meets the requirements. A copy of the file will also be provided to adjust and add, but not delete requirements for the respective system. The copies may be reformat of the tables (e.g., change row heights or column widths) while retaining the structure of the tables. A similar table Requirements Verification Compliance Matrix (RVCN), based upon Enclosure 1, will be provided at a later time and submitted as stated in Table C-1, to verify when and how the test requirements were met.

F. Ancillary Items

In this section the offerer shall provide information about equipment available or recommended for use with the production units including: 1. Pre-Mission Diagnostics Tools, 2. Handling Tools and Equipment, 3. Launch and Recovery Equipment, 4. Special Test Equipment including pre-deployment test kit, and 5. Training. For each item listed, the offeror shall indicate whether the item is included in the cost of the Fuel Cell or whether additional costs will be incurred.

1. The Pre-Mission Setup and Diagnostics Tool description shall include a description of the user interface and a list of conditions diagnosed by the tool.
2. The Handling Tools and Equipment shall include a list and functional description of deck or lab handling equipment.
3. The Launch and Recovery Equipment description shall include the launch and recovery technical approach, specialized equipment related to launch and recovery, usability of equipment in various sea states, interfaces to ships.
4. The Special Test Equipment description shall characterize external or built-in test interfaces, pre-deployment test equipment or other items that could be used to confirm operational status at various points in operations or maintenance.
5. The Training Capabilities shall be listed, including a list of readily available training courses and procedures.

G. Enclosure Guidelines

Section L Enclosures 1 and 2 do not count toward the Technical volume 20 page limit. Enclosure 1 will become Section J, Attachment #6 of the Contract. Enclosure 2 will become Section J, Attachment #7. Enclosure formats/examples are listed at the end of Section L -8.5.5.

Spec I.D. (column 1) of Enclosure 1 refers to the specification identifiers in the Specifications listed in Attachment J. Fill in the **Parameter Value** column by Instrument Type with the parameters of your proposed instrument. Please use the units specified in the **Units** column. Where available, cite specific references in the **Substantiation** column that substantiate the value listed. No substantiation needed where N/A is shown. The same reference may be cited in multiple places. Cited references may include:

- Independent research papers
- Independent test results
- Testing by the Offeror
- Engineering analysis by the Offeror

If no references are available, a statement by the Offeror may be provided in the proposal (e.g., “The communications board in the system supports RS-232 interfaces.”) Explain any instances in which the values entered are not compliant with the specifications in Attachment J.

Where possible, please include a copy of each cited reference as electronic attachment to your proposal. These attachments do not count against the proposal page limit. Where doing so presents copyright issues, it is appropriate to provide a publicly available location (e.g. document reference, Internet URL) where the cited reference may be found.

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Make a copy of Enclosure 2 which will become Section J, Attachment #7, **Proposed Auxiliary Hardware Make and Model** and include it in your proposal. Fill in the Instrument Make and Model Number column for the hardware proposed.

H. Discussion/Final Proposal Revision (If applicable).

If discussions are applicable, all Offerors selected to participate in discussions shall be advised of weaknesses in their proposal, and shall be offered a reasonable opportunity to correct or resolve such weaknesses and to submit such technical and cost information, or other revisions to their proposal, that may result from such discussions. WHOI reserves the right to enter into discussions if the only weakness is the affordability of the initial proposal.

The WHOI contracting representative intends to make award without conducting discussions; however, at his/her discretion, the contracting representative may determine the competitive range and elect to conduct either verbal and/or written discussions. If the WHOI contracting representative elects to conduct discussions, the representative reserves the right to conduct oral presentations of discussion question responses followed by a question-and-answer session. At such time, the WHOI contracting representative will also provide the Offerors with information as to the format, length and rules which will govern the conduct of oral presentations of discussion question responses. The content of these presentations will be in response to questions the WHOI contracting representative may submit to the Offeror during the discussion period. The purpose and goal of presentations of discussion question responses is to clarify and gain a better understanding of questions posted to the Offeror by WHOI and the Offeror's responses and will not constitute part of the Offer. Written answers to discussion questions will become part of the proposal. When discussions are completed, the WHOI contracting representative will close discussions and request the final revised proposal (FRP).

Subsequent to the conclusion of discussions, if an FRP is requested, Offerors have the option of providing a completely new Technical volume, not to exceed 20-pages, or of providing substitute/additional pages to their updated Technical volume with the resulting page count of the Technical volume not to exceed 20 pages. After discussions offerors may be asked to submit a revised version of 3310-00005 Fuel Cell Specification that represents a more affordable option for WHOI. Issues not raised during discussions may be addressed in the FRP, but only information included in the FRP will be evaluated.

L-8.3 Volume II – Management

The offeror shall provide a Management Plan and Structure documenting how it will manage this project. The plan shall address the lines of communication between the offeror and the Procuring Organization. This plan shall address the corporate resources that the offeror will be able to devote to this project. Additionally, as part of the management plan, the offeror shall address how it will manage logistics, quality control, configuration management, and risk management.

The Management Volume shall consist of five (5) parts and be organized as follows:

1. Qualifications and Numbers of Personnel:
 - a. Design Engineers,
 - b. QA/QC Engineers,
 - c. Test Engineers,
 - d. Production Personnel,

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- e. Support Personnel
 - f. Software Engineers
 - g. Hardware Engineers
2. Resumes of Key Personnel:
- a. Project Manager,
 - b. Lead Engineer(s),
 - c. Production Manager,
 - d. Test Engineering Manager,
 - e. Quality Assurance Manager
 - f. Software Engineers
 - g. Hardware Engineers
3. Cost Control:
- a. Methodology,
 - b. Procedures,
 - c. Cost control lessons learned from previous work.
4. Work Breakdown Structure:
- a. The Offeror shall provide a draft Work Breakdown Structure (WBS) to at least the third level of detail showing how task management would be performed and tracked.
5. Training Plan
- a. The offerors shall provide its proposed training plan addressing lesson plans, trainee guides, visual aids, and computer-based training.

L-8.4 Volume III – Past Performance

The Offeror shall describe past performance experience in accordance with the requirements below. If the Offeror has no past performance experience that satisfies the requirements below, the Offeror shall include a statement to this effect.

The Offeror shall submit Past Performance information on no more than three (3) contracts that the Offeror considers most relevant to demonstrate the ability to perform the proposed effort. The offeror shall identify three contracts under which it has delivered similar instruments within the past three years, or is presently delivering instruments, which are similar to the work called for by this solicitation. The offeror shall provide a description of each contract and its dollar value. The offeror shall provide the names and telephone numbers of the customer's technical and contractual points-of-contact for each contract. In evaluating relevant experience, WHOI may contact the references provided by the Offeror and other sources of information, including, but not limited to: Federal, state, and local government agencies, better business bureaus, published media, and electronic databases. WHOI may consider experience information obtained from sources other than those identified by the Offeror. If the offeror does not have three such contracts, it shall provide the above information for as many contracts it has.

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The Offeror should complete Table L-1 *Individual Effort Summary* for each reference provided.

Table L-1 Past Performance Individual Effort Summary Table

Effort name	
Customer name and address	
Effort period of performance	From __/__/____ to __/__/____
Contract Number	
1. Contract name	Contract-1 name
2. Contract name	Contract-2 name
Task or Order Number (if applicable)	
Contract Type	
Original Contract Value	
Current Contract Value	
Period of Performance	
Place of Performance	
Program Title, including a brief (100 words or less) description of work performed	State technical objectives and if they were achieved, discuss cost growths and schedule delays encountered and corrective actions to overcome. Also identify and explain any technical, cost and schedule objectives in similar contracts that were not met and why. Also state when and which objectives were met.
Points of contact telephone numbers (Government, or commercial POC and Contractor)	

The Offeror shall provide descriptive text limited to two pages for each effort following each Individual Effort Summary table. In this text, the Offeror shall describe the relevance of each effort to the current acquisition as well as any problems encountered during these efforts and their resolution.

L-8.5 Volume IV - Cost/Price Proposal Content

The Offeror shall provide one original plus the required number of copies of its contract cost proposal, as specified in Section L-2.2 including any supporting information required. Timeliness of receipt of proposals will be determined based on the time of receipt at the WHOI location.

The Offeror’s Cost/Price Proposal shall include the information required by this section and the information required by Section B of this solicitation. The format presented in SECTION B – SUPPLIES OR SERVICES and PRICES/COSTS is used for internal accounting purposes. The format in SECTION

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B requires the Offeror to segregate proposed amounts for CLINs 0001-0003. Cost data must be documented in the supporting data breakdown sheets.

Release of Cost Information: All cost information submitted pursuant to this clause is for the exclusive use of WHOI representatives, and will be treated as business confidential and will not be publicly disclosed, provided that, where a request for disclosure of such cost information is submitted to the Government pursuant to the Freedom of Information Act (5 U.S.C. 552a), WHOI will not disclose Offeror's cost information if public disclosure of such information would substantially harm the Offeror in its competitive position. In order to help ensure non-disclosure, the title page of the cost proposal and other sheets of cost proposal data should be marked "TECHNICAL INFORMATION – NOT TO BE PUBLICLY DISCLOSED", and the cost proposal shall be submitted in a separate Volume from the Technical Volume electronically or, if delivered via mail, enclosed in sealed boxes or envelopes marked "DO NOT OPEN IN THE MAIL ROOM—FORWARD UNOPENED DIRECTLY TO WHOI Fuel Cells POC - Mr. Dennis Fox".

The Offeror is required to provide a Contract Cost Proposal, including required supporting information in accordance with Section L, which is responsive to solicitation requirements. The following issues should also be addressed, as necessary, in the Cost Proposal:

- Any inconsistency between this proposal and the Offeror's established estimating and accounting practices and procedures and FAR Part 31 – Contract Cost Principles and Procedures.
- Whether the Offeror is, or may be, in noncompliance with its Disclosure Statement; or whether any aspect of this proposal is inconsistent with the Offeror's disclosed practices.

Unrealistically low cost estimates, initially or subsequently, may be grounds for eliminating a proposal from competition either on the grounds that the Offeror does not understand the requirement or that he has made an improvident proposal. The burden of proof of cost credibility rests with the Offeror. If the WHOI representative determines an Offeror's estimates to be inexplicably low, that Offeror may be eliminated from the competition without further discussion.

Failure to submit cost data in the format required by Section L, in particular, Cost Breakdown #1-A (CLIN 0001) through Cost Breakdown #3-A (CLIN 0003), may result in an Offeror's proposal being eliminated from this competition.

▪ **A. Financial Responsibility**

The offeror must provide proof of Financial Stability Bidder, that is, demonstrate how its company is financially stable and could be considered an "ongoing concern". Bidders will provide documentation (e.g. audited financial statements from a certified public accounting firm) that covers the past two fiscal years (an income statement, showing revenues or sales, expenses and net assets, and balance sheet information showing assets, liabilities and total net assets). Failure to provide adequate documentation can result in a financial risk factor assessment in the evaluation of your proposal.

B, Subsection 1: Overview/Estimating Methodology and System

- a. Each Offeror shall fully explain the estimating rationale on which his proposal is based, including full supporting rationale for proposed prime and significant subcontractor (defined as those contractors providing effort consisting of five percent (5% or greater) of total direct dollars, AND/OR ten percent (10% or greater) of total man hours) labor and overhead rates. Full supporting rationale includes both numeric projections and written explanation.

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- b. Each offeror shall provide current forward pricing rate agreement (FPRA) rates. If rates are under negotiation, provide status of negotiations. Identify if rates used in the proposal are current Defense Contract Audit Agency (DCAA) approved (year approved) or, if rates used are provisional, when they were submitted for DCAA review. Identify if any escalation factor was applied to previously approved DCAA rates. Bidders are to provide evidence that their accounting system is acceptable for award per DCAA (eg. DCMA correspondence).
- c. If the Offeror submits prime rates different from the most current FPRA, the Offeror must provide supporting back-up documentation, which fully supports the rate the Offeror is proposing. The back-up information must contain the actual data used to derive the proposed rate, such that an evaluator can clearly duplicate the proposed rate using the methodology and data used and provided by the Offeror. The Offeror **SHALL NOT** merely provide an estimating rationale without providing the data and methodology used to derive the proposed rate. Failure of the Offeror to comply with all aspects of this section may render the proposal non-responsive and the Offeror may be removed from competition.
- d. The Offeror must provide directly, or indirectly, significant Subcontractor labor and overhead rate information and the types of subcontract vehicles proposed for effort contained in this solicitation. The Offeror may provide this information using one of the following methods:
 1. Subcontractor labor and overhead rate information provided by the Subcontractor: Significant Subcontractors may provide labor and overhead rate information directly, or indirectly, to support efforts proposed by individual subcontractors. The rates proposed must be verifiable. The Significant Subcontractor must provide supporting back-up documentation, which fully supports the rate the Subcontractor is proposing. The back-up information must contain the actual data used to derive the proposed rate, such that an evaluator can clearly duplicate the proposed rate using the methodology and data used and provided by the Subcontractor. The Subcontractor **SHALL NOT** merely provide an estimating rationale without providing the data and methodology used to derive the proposed rate. Failure of the Subcontractor to comply with all aspects of this section may render the proposal non-responsive and the Offeror may be removed from competition.
 2. Subcontractor rates derived by actual historical data held by the prime contractor: The Offeror may use historical information from Subcontractors they have previously used and have actual data from to derive proposed Subcontractor labor and overhead rate information. The Offeror must provide supporting back-up documentation, which fully supports the rate the Offeror is proposing for the specific Subcontractor(s). The back-up information must contain the actual historical data from the specific Subcontractor used to derive the proposed rate, such that an evaluator can clearly duplicate the proposed rate using the methodology and historical data used and provided by the Offeror. The Offeror **SHALL NOT** merely provide an estimating rationale without providing the historical data and methodology used to derive the proposed Subcontractor rates. The Offeror **SHALL NOT** propose rates for a specific Subcontractor, which was derived by the Offeror if the Offeror does not have actual data from the specific Subcontractor. Failure of the Offeror to comply with all aspects of this section may render the proposal non-responsive and the Offeror may be removed from competition.
- e. Historical labor, overhead, General & Administrative (G&A) and other proposed rates for the last four corporate fiscal years plus year-to-date actuals. For overhead accounts, provide historical base/expense pool data as well as rates.
- f. Projections for all rates and factors throughout the duration of this effort, including base/expense pool projections for all years. Business base projections should clearly indicate the basis for anticipated workload and what programs/contracts are included in business base.

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B. Subsection 2: Cost Assumptions

The Offeror shall provide all relevant cost assumptions and information, which form the basis of its proposal. Cost assumptions and information include, but are not limited to, the use of overtime premiums, advanced procurement costs, long lead costs, termination costs, development/production schedule, and special tooling/test equipment. If the Offeror takes exception to any ground rules or assumptions stated in the solicitation, describe each exception or qualification and provide complete rationale.

C. Cost plus Fixed Fee/NTE Price

The cost/price proposal shall provide for CLINs 0001-0003 in Section B. Further details/supporting cost data shall conform to L-8.5.5 below and address the following:

- a. Other Direct Costs (ODCs): The Offeror may propose ODCs by name.
- b. Pricing Sheet: The Offeror's proposal shall include a completed pricing sheet in the attached format. The Offeror shall ensure mathematical computations are correct. Errors in addition or multiplication may be considered nonresponsive.
 1. Offerors shall propose on all contract line items, either by price or "NSP" (Not Separately Priced). A zero dollar figure in a proposal means the Offeror will provide the line item at no charge to the Procuring Organization. A contract line item price left blank will be considered nonresponsive to this request and the proposal will not be considered for award.
 2. Offerors' proposals shall remain valid for **90 days** from the date of submission.
- c. Bill of Materials: Provide proposed materials in an item description/quantity/cost format that supports your proposed Prime and subcontract material amount.

D. Additional Supporting Cost data

- a. Cost Breakdown #1-A through Cost Breakdown #3-A, below should be provided for CLINs 0001 through 0003, respectively. In addition, for the Cost Plus Fixed Fee (CPFF) CLINs 0001-0002, Offerors should provide a Total CLIN Summary in Cost Breakdown #1 format (i.e., the total of all Cost Breakdown #1-A - #2-A CLIN sheets should equal the Total CLIN Summary in the Cost Breakdown #1 format). This must be provided as part of the Cost volume in hardcopy and in Microsoft EXCEL format (provide on required number of compact disks) (see Section L "Proposal Submission Requirements"). EXCEL spreadsheets shall clearly show cell formulas, which can be clearly traced. Offerors shall not submit files with hidden formulas or files in Adobe Acrobat format in addition to the hard copies of the cost proposal.
- b. For each Cost Breakdown provided in Microsoft Excel format, the Offeror must establish clear identifiable links and calculations, such that WHOI is able to replicate the estimates provided.

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CLIN 0001 SUPPORTING COST DATA BREAKDOWN #1-A

COST SUMMARY

OFFEROR: _____

Cost Element	Hours	Rate* Amount
Prime Direct Labor (D/L by category of labor)		*(In dollars not percentage)
Overhead		
Subcontract Costs (List each Significant Subcontractor D/L)		
Prime Material		
Subcontract Material		
All Other Costs (By Name)		
Subtotal		
G&A		
Total Cost		
Fee		
Cost Plus Fixed Fee		

The Offeror shall provide a basis of estimates sufficiently detailed to demonstrate the reasonableness and realism of proposed costs. The basis of estimates shall include description of tasks, rationale, and calculations to support all proposed Prime Direct Labor, Subcontract Costs (list each Significant Subcontractor), Prime Material, Subcontract Material, and Other Costs. The following basic information shall be provided in a basis of estimates. Contractor formats are acceptable.

- a. Task Description
- b. Estimating Rationale
- c. Calculation Method

* Indicate clearly Origin of Rate (e.g. Program Average, Forward Pricing Rate). If program average rate, indicate where rates are to be found that were used to develop the program average rate.

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CLIN 0002 SUPPORTING COST DATA BREAKDOWN #2-A

COST SUMMARY

OFFEROR: _____

Cost Element	Hours	Rate* Amount
Prime Direct Labor (D/L)		*(In dollars not percentage)
Overhead		
Subcontract Costs (List each Significant Subcontractor D/L)		
Prime Material		
Subcontract Material		
All Other Costs (By Name)		
Subtotal		
G&A		
Total Cost		
Fixed Fee		
Cost Plus Fixed Fee		

The Offeror shall provide a basis of estimates sufficiently detailed to demonstrate the reasonableness and realism of proposed costs. The basis of estimates shall include description of tasks, rationale, and calculations to support all proposed Prime Direct Labor, Subcontract Costs (List each Significant Subcontractor) , Prime Material, Subcontract Material, and Other Costs. The following basic information shall be provided in a basis of estimates. Contractor formats are acceptable.

- a. Task Description
- b. Estimating Rationale
- c. Calculation Method

* Indicate clearly Origin of Rate (e.g. Program Average, Forward Pricing Rate). If program average rate, indicate where rates are to be found that were used to develop the program average rate.

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CLIN 0003 SUPPORTING COST DATA BREAKDOWN #3-A

COST SUMMARY FOR NTE CLIN 0003

OFFEROR: _____

Cost Element	Hours	Rate* Amount
Prime Material		*(In dollars not percentage)
Subcontract Material		
All Other Costs (By Name)		
Subtotal		
G&A		
Total NTE Price Estimate		

The Offeror shall provide a basis of estimates sufficiently detailed to demonstrate the reasonableness and realism of proposed costs. The basis of estimates shall include description of tasks, rationale, and calculations to support all proposed Prime Direct Labor, Subcontract Costs (List each Significant Subcontractor) , Prime Material, Subcontract Material, and Other Costs. The following basic information shall be provided in a basis of estimates. Contractor formats are acceptable.

- a. Task Description
- b. Estimating Rationale
- c. Calculation Method

* Indicate clearly Origin of Rate (e.g. Program Average, Forward Pricing Rate). If program average rate, indicate where rates are to be found that were used to develop the program average rate.

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Enclosure 1 to Section L (will become Section J, Attachment # 6 of the Contract)
 (See L-8.2, Volume I – A. Technical Approach and E. Test/Quality System for details)

Compliance Matrix for Fuel Cell

Spec I.D.	Parameter	Units	Parameter Value	Substantiation	Verification Approach
OPEN-001	Power outputs from the Fuel Cell System are electrically isolated from the buoy hull	Yes/No			
OPEN-002	The Fuel Cell System shall sustain periods of icing.	Yes/No			
OPEN-003	The Fuel Cell System shall be splash-proof	Yes/No			
OPEN-004	The Fuel Cell System shall survive immersion in seawater to a depth of 5m.	Yes/No			
OPEN-005	The Fuel Cell System shall be capable of unattended operation for a period of 13 months with no intervening service visits.	Yes/No			
OPEN-006	The Fuel Cell System shall be capable of operating over the temperature range -10 C to +40 C.	Yes/No			
OPEN-007	The Fuel Cell enclosure and mechanical pass-through shall prevent sea water from entering the Fuel Cell System.	Yes/No			

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Spec I.D.	Parameter	Units	Parameter Value	Substantiation	Verification Approach
OPEN-008	The Fuel Cell System shall remain operational when tilted at all angles up to 45 degrees from vertical.	Yes/No			
FCEL-001	The Fuel Cell Module rated output power is no less than 150 W	Yes/No			
FCEL-002	The Fuel Cell System has a nominal output voltage of 24 VDC. (bulk charging up to 28.6V, above which it will provide constant voltage charging until the current level drops to 3.1A)	Yes/No			
FCEL-003	The Fuel Cell System shall produce no less than 800 kW-hr of electrical energy without service over the course of a 7 month deployment interval.	Yes/No			
FCEL-004	The Fuel Cell Modules fit within the allocated foam cutout volume of 0.5 m length, 0.3 m width and 0.5 m height per Buoy/Fuel Cell ICD, drawing # 3701-00313.	Yes/No			
FCEL-005	The Fuel Cell System shall be capable of unattended operation for two, 7 month deployment intervals with an intervening factory refurbishment.	Yes/No			

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Spec I.D.	Parameter	Units	Parameter Value	Substantiation	Verification Approach
FCEL-006	The Fuel Cell System shall be capable of unattended operation for a single, 15 month deployment interval.	Yes/No			
FCEL-007	Each Fuel Cell Module shall be capable of operating for a total of 3000 hours during a single deployment interval.	Yes/No			
FCEL-008	Each Fuel Cell Module shall be capable of being restarted 100 times, from a powered down state, during a single deployment interval.	Yes/No			
FCEL-009	The fuel used by the Fuel Cell System shall be an atmospheric pressure liquid such as methanol.	Yes/No			
FCEL-010	The Fuel Cell System fuel storage system capacity shall be no less than 1000 liters.	Yes/No			
FCEL-011	The oxygen for operation of the Fuel Cell System shall be drawn from ambient air external to the buoy.	Yes/No			
FCEL-012	The Fuel Cell System fuel storage system shall be designed to prevent intrusion of seawater during the entire deployment interval.	Yes/No			

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Spec I.D.	Parameter	Units	Parameter Value	Substantiation	Verification Approach
FCEL-013	The Fuel Cell System fuel storage system shall be designed to prevent leakage of fuel to the environment during the entire deployment interval.	Yes/No			
FCEL-014	The Fuel Cell System waste heat and exhaust shall be dissipated in such a way as to have minimal impact on environmental science measurements.	Yes/No			
FCEL-015	The Fuel Cell System power state shall be controllable by a logic level signal or contact closure.	Yes/No			
DATA-001	The communication interface between the Fuel Cell System and the PSC shall be full duplex serial.	Yes/No			
DATA-002	The Fuel Cell System shall have the ability to provide power system engineering data to the PSC	Yes/No			
DATA-003	The Fuel Cell System engineering data interface shall be capable of a refresh rate of 1Hz.	Yes/No			
DATA-004	The Fuel Cell System data interface shall support a push or continuous data mode.	Yes/No			

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Spec I.D.	Parameter	Units	Parameter Value	Substantiation	Verification Approach
DATA-005	The Fuel Cell System shall be capable of monitoring and reporting quantity of fuel remaining.	Yes/No			
DATA-006	The Fuel Cell System shall be capable of monitoring and reporting output bus voltage.	Yes/No			
DATA-007	The Fuel Cell System shall be capable of monitoring and reporting output bus current.	Yes/No			
DATA-008	The Fuel Cell System shall be capable of monitoring and reporting internal battery voltage.	Yes/No			
MANU-001	Compatible with National & International Standards (IEEE, ANSI, IEC)	Yes/No			
QUAL-001	Manufactured in accordance with manufacturer's best practices. Records of tests and inspections available for review	Yes/No			
QUAL-002	Certificate of Compliance provided containing: Factory Acceptance Test and calibration records for Fuel Cell System	Yes/No			
QUAL-003	Materials used are resistant to/and treated to reduce wear, corrosion and deterioration	Yes/No			

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Spec I.D.	Parameter	Units	Parameter Value	Substantiation	Verification Approach
IDNT-001	Fuel Cell System marked with indelible ink on an exterior surface per Fuel Cell Specification 3309-00046	Yes/No			
IDNT-002	Transportation cases provided and include external labels specifying safe handling precautions	Yes/No			
SHIP-001	Storage temperature (without damage or degradation to Fuel Cell) between 0°F and 120°F for up to 1 year	Yes/No			
SHIP-002	Transportation cases survive shipping conditions in ASTM D4169 truck Assurance Level 1	Yes/No			

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SECTION M - EVALUATION FACTORS FOR AWARD

M-1 GENERAL

The contract will be awarded to the Offeror whose proposal represents the best value after evaluation of the factors and subfactors in the solicitation. “Factors” shall include all of those evaluation factors described in this Section M.

WHOI intends to evaluate proposals and award a contract without discussions with Offerors; however, WHOI reserves the right to conduct discussions if later determined by the CO to be necessary. Therefore, each initial offer and response should contain the Offeror’s best terms from a cost and technical standpoint.

WHOI intends to evaluate risk, including the risk of performance within the overall evaluation of each Offeror’s response to the solicitation. The Offerors’ relative capability, as indicated by their response to the solicitation, will be considered in this evaluation.

WHOI will evaluate the reasonableness and realism of the cost for each acceptable offer in relation to the Offeror’s relative capability.

Only one offer will be accepted. WHOI will not accept alternate proposals.

Offerors are advised that a proposal receiving an “unacceptable” rating under any factor or subfactor may be rejected as ineligible for award (see Section M-4.1 and M-4.2 for Adjectival Rating structure).

Basis for Award: Award will be made on a competitive best value basis, using “Best Value Tradeoff” among cost/price and non-cost/price factors (see Section M-4.3 for Best Value Tradeoff Rating structure). A best value tradeoff process will be used when the Procuring Organization elects to award to other than the lowest priced Offeror, or other than the Offeror with the highest rated non-cost/price proposal. WHOI reserves the right to award to other than the lowest price Offeror. Past Performance will be evaluated independently from the other non-cost/price evaluation factors using the Adjectival Rating structure in Section M-4.2). The evaluation factors are as follows:

1. Technical
2. Management
3. Past Performance
4. Cost/Price.

After each factor is rated by individuals on the Source Selection Committee, a consensus rating will be assigned to the factor. Only proposals receiving a consensus rating of “Acceptable” or higher will be considered for award. When considering the proposals for award WHOI will consider the total impact to the OOI program, opportunities for quantity discounts, maintaining multiple potential sources, and ease of integration along with other programmatic concerns.

Relative Importance of Factors: Of the non-cost/price factors (as detailed in Technical Volume I), the non-past performance factors are more important than past performance. The non-cost/price factors (including Past Performance) are more important than cost/price. However, a lower rated proposal may be selected when in WHOI’s judgment the higher rated proposal carries with it a risk of not being affordable.

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M-2 Non-Cost/Price Evaluation Criteria

The proposal must manifest the Offeror's assent, without exception, to the terms and conditions of the RFP, including attachments, to be eligible for award. If an Offeror takes exception to any of the terms and conditions of the RFP, then WHOI may consider its offer to be unacceptable.

The following criteria will be used to evaluate the non-cost/price aspects of the proposal.

M-2.1 Factor 1- Technical

The technical approach will be evaluated for evidence of the degree to which the Offeror's technical proposal demonstrates a clear understanding of the Fuel Cell technology and a reasonable, well-thought-out approach that is likely to yield the required results within the required time frame. The Offeror's proposal will be used to assess the Offeror's understanding of tasks to be performed, as well as the technical approach and methodology for accomplishing performance requirement from the Specification(s) and tasks to meet the requirements of the SOW. Offerors shall highlight any unique test or production equipment in this section.

Subfactors:

A. Technical Approach

1. Enclosure 1 to Section L - ability of the offeror to meet the requirements for the Fuel Cell system clearly showing where non-recurring engineering (NRE) work is needed, the current capability and technical approach, and a description of the approach to enhance the existing product to meeting the requirements.
2. Enclosure 2 to Section L - Description of Auxiliary Hardware required to meet the specifications and to evaluate the potential NRE required.
3. Form and Fit evaluation of the payload space, weight power delivery and mounting locations of main system components and ability of the complete Fuel Cell system to meet all environmental requirements during a seagoing deployment.
4. Description of field operations and deployment including fueling, powerup and powerdown, storage, assembly and disassembly, safety issues, etc.

B. Producibility Plan

1. Description of the plan to produce 10 Fuel Cell systems over 2 years.
2. Demonstrate plan for producing these units within the estimate:
 - a. Man hour estimates
 - b. Material estimates
 - c. Risks and mitigation strategies
 - d. Cost, but not fee

C. Schedule

1. Schedule's ability to meet milestones of Section M-2 E (below) Test/Quality Assurance System
2. Design reviews
3. Tests

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4. Deliveries
5. Installations / Deployments

D. Maintenance and Refurbishment

1. Capability and experience with maintaining and refurbishing the systems
 - a. x units/time
 - b. Environments where units were deployed
2. Estimated operational life and refurbishment cycles

E. Test /Quality Assurance System:

1. Enclosure 1 to Section L- Compliance Matrix will be evaluated for completeness, accuracy and ability to meet the requirements.
 - a. The CDRLs (Table C-1) list provides review points where verification of the Compliance Matrix items will be evaluated. The Verification form will be provided at a later date, but is mentioned here as a graded deliverable for the offeror's planning purposes.
2. Compliance with ISO-9001 standing

F. Ancillary Items

1. Pre-mission Setup/Diagnostic Tools
 - a. User interface covered
 - b. Completeness of conditions diagnosed
2. Handling Tools and Equipment
 - a. Functional description of deck and lab handling equipment
 - b. Personnel and skill sets required
3. Launch and Recovery Equipment
 - a. Technical approach
 - b. Equipment, including specialized, for launch and recovery
 - c. Usability in various sea states
 - d. Interfaces to ships
 - e. Personnel and skill sets required
4. All Special Test Equipment ability to maintain the system
 - a. External or built-in test interfaces
 - b. Pre-deployment test equipment to confirm operational status in operation or maintenance
5. Training available by all required personnel to meet the mission
 - a. Courses
 - b. Procedures

G. Discussion/Final Proposal Revision – if selected to participate in discussions;

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1. Corrective plan to resolve weaknesses
2. Revised Technical and Cost (or other) information to resolve issues

M-2.2 Factor 2 Management Approach

The management approach will be evaluated for the degree to which the Offeror's proposal reflects a management approach (including approach to staffing) that will lead to the successful accomplishment of the requirement.

Subfactors:

A. Quantifications and numbers of personnel – tabular form of evidence that the organization (including Subcontractors) has current capabilities and for ensuring performance of this requirement:

1. Design Engineers
2. QA/QC Engineers
3. Test Engineers
4. Production Personnel
5. Support Personnel
6. Software Engineers
7. Hardware Engineers

B. Resumes for key personnel

1. Project Manager
2. Lead Engineer(s)
3. Production Manager
4. Test Engineering Manager
5. Quality Assurance/Control Manager(s)
6. Software Engineers
7. Hardware Engineers

C. Cost control

1. Methodology
2. Procedures
3. Cost control lessons - from previous work

D. Work Breakdown Structure

1. Viability of a draft Work Breakdown Structure (WBS) to at least the third level of detail
2. Ability to manage task performance and tracking

E. Training Plans

1. Proposed employee training plan addressing:
 - a. Lesson plans

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- b. Trainee guides
- c. Visual aids and computer-based training

M-2.3 Factor 3 Past Performance

The Past Performance evaluation will assess the risks associated with an Offeror's likelihood of success in performing SOW requirements and meeting the Specifications requirement as indicated by the Offeror's record of past performance on relevant efforts, either included in the proposal or identified by the evaluators in any other manner. In this context, "Offeror" refers to the proposed Prime Contractor and all proposed Subcontractors. The Prime Contractor and proposed Subcontractors will first be assessed individually and the results will then be assessed in their totality to derive the Offeror's Past Performance rating.

The Procuring Organization will conduct a Past Performance evaluation that will be based on the quality, relevance, and recentness of the Offeror's past performance, as well as that of its Subcontractors. This evaluation will consider how each Offeror's past performance relates to the probability of successful accomplishment of the required effort. The Evaluators will access any sources of information available and will consider all information found in addition to considering information provided in the proposal and information supplied by Offeror references.

In the case of an Offeror without a record of relevant experience or for whom information on experience is not available, the Offeror will not be evaluated favorably or unfavorably on relevant experience (i.e., that Offeror will be rated neutral). WHOI has determined that a neutral rating will be assigned an Acceptable rating.

Subfactors:

A. Contractor performance

- 1. Completion of deliverables, including status/progress reports and invoices
- 2. Timeliness of deliverables
- 3. Debarment history
- 4. Stop work order history
- 5. Cancellation history
- 6. Responsiveness to redirection, inquiries
- 7. Adherence to cost provisions
- 8. Adherence to other contract provisions

B. Project management

- 1. Adherence to schedule
- 2. Responsiveness to changes in requirements, schedule
- 3. Adequacy of staffing
- 4. Execution of cost/spending plans, adequacy of controls, adequacy of reporting, EVMS
- 5. Execution of Quality Control
- 6. Adequacy of plans, reviews, and tests

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7. Transition to operations

C. Technical performance

1. Met technical specifications
2. Performance was reliable throughout performance cycles
3. Maintenance met specifications and was affordable, as predicted, timely

D. User satisfaction with:

1. Delivered Technical performance
2. Delivered Environmental range
3. Delivered Durability
4. Delivered Form and Fit
5. Offeror is reasonable and cooperative during performance

M-3 Factor 4 - Cost/Price

The Cost evaluation will be based on an analysis of the reasonableness, realism and completeness of the cost data. Pertinent cost information, including but not limited to Defense Contract Audit Agency (DCAA) recommended rates for such costs as fringe benefits, overhead, G&A, etc., as necessary and appropriate, will be used to arrive at the WHOI determination of the realism of the Offeror's proposed costs. If proposed costs are considered to be unrealistic, including unrealistic indirect rates, the Offeror will be asked to adjust costs upward or downward to reflect more realistic costs. Based on such analysis, an evaluated cost for the Offeror will be calculated to reflect WHOI's estimate of the Offeror's most probable costs. WHOI will evaluate offers for award purposes by adding the total evaluated costs for CLINs 0001 and 0002, plus the NTE price for CLIN 0003.

Evaluation of the options will not obligate WHOI to exercise the options. All costs will be assessed on the basis of magnitude and realism. This evaluated cost will be used in making an award recommendation. Therefore, any inconsistency, whether real or apparent, between promised performance and cost should be explained in the supporting cost data. The burden of proof for cost credibility rests with the Offeror. Offerors are cautioned that to the extent proposed costs appear unrealistic, WHOI may infer either a lack of understanding of the requirements, increased risk of performance, or lack of credibility on the part of the Offeror.

- A. The total evaluated cost/price will be evaluated for reasonableness in terms of:
 1. Proposed labor categories and their rates
 2. Level of effort, in that the proposed labor mix and labor hours are based on reasonable assumptions
 3. Consistency with the technical approach, in that the prices are consistent with and reflect the proposed staffing requirement for all years
- B. The total evaluated cost/price will be evaluated for realism in terms of:
 1. Whether proposed costs are realistic for the work to be performed
 2. Consistency of supporting documentation/methods for the costs proposed
- C. This Cost evaluation assumes Cost Plus Fixed Fee for CLINs 0001-0002 and (ultimately) Firm Fixed Price for CLIN 0003. The Procuring Organization will also conduct an appropriate analysis

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to determine whether the proposed cost/price is realistic in that the level of effort, labor mix and other direct costs (ODCs) are realistic given the nature of the work to be performed.

- D. The evaluated price will be the total of all the priced line items, including fee, for CLINS 0001 - 0003 and any cost adjustments made as a result of evaluating cost realism.
- E. Unsubstantiated costs that are considered unrealistic, not fully supported, or both, may cause the overall non-cost/price evaluation to be adjusted in the non-Cost/Price Factors.
- F. The Procuring Organization will analyze the Offerors' estimated costs for both realism and reasonableness. The cost realism analysis will be used to determine each Offeror's most probable cost of performance. This will preclude an award decision based on an overly optimistic cost estimate. Additionally, the Procuring Organization will also perform profit or fee analysis.
- G. The non-cost/price evaluators and the cost evaluators will crosswalk identified weaknesses with regard to their impact on cost so that proper adjustments can be made to the proposed costs.
- H. The closer the non-cost/price evaluations of the competing proposals become, the more important cost/price becomes.

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M-4 Ratings for the Non-Cost/Price Proposal

M-4.1 Adjectival Ratings for the Non Cost/Price Proposal Technical and Management Factors and Subfactors

Rating	Definition
Exceptional (E) 91-100	The proposal has exceptional merit and reflects an excellent approach which should clearly result in the superior attainment of all requirements and objectives. The proposed approach includes numerous substantial advantages, and essentially no disadvantages, and can be expected to result in outstanding performance. The solutions proposed are considered very low risk in that they are exceptionally clear and precise, fully supported, and demonstrate a complete understanding of the requirements. The impact of the strengths greatly outweighs the impact of any weaknesses. The proposed solution exceeds requirements in a way that adds significant value to the performance of the OOI mission. Risk Level: Very Low
Good (G) 81-90	The proposal demonstrates a sound approach which is expected to meet all requirements and objectives. This approach includes substantial advantages, and few relatively minor disadvantages, which collectively can be expected to result in better than satisfactory performance. The solutions proposed are considered to reflect low risk in that they are clear and precise, supported, and demonstrate a clear understanding of the requirements. The impact of the strengths outweighs the impact of the weaknesses. The proposed solution exceeds requirements in a way that adds value to the performance of the OOI mission. Risk Level: Low
Acceptable (A) 71-80	The proposal demonstrates an approach which is capable of meeting all requirements and objectives. The approach may have both advantages and disadvantages, however any disadvantages do not outweigh the advantages and the approach can be expected to result in satisfactory performance. The solutions proposed are considered to reflect moderate risk in that they are for the most part clear, precise, and supported, and demonstrate a general understanding of all the requirements. The impact of weaknesses is balanced by the impact of strengths. Risk Level: Moderate
Marginal (M) 61-70	The proposal does not demonstrate a full understanding of all the requirements and may pose a risk that the Offeror might fail to perform satisfactorily without significant Procuring Organization oversight or participation. Any advantages that may exist in the approach are outweighed by existing disadvantages. The solutions proposed are considered to reflect high risk in that they lack clarity and precision, or are unsupported. The impact of weaknesses outweighs the impact of strengths. Risk Level: High
Unacceptable (U) 0-60	The proposal demonstrates an approach which will very likely not be capable of meeting all requirements and objectives. This approach has one or more substantial disadvantages or contains a deficiency. Collectively, the advantages and disadvantages are not likely to result in satisfactory performance. The solutions proposed are considered to reflect very high risk in that they lack any clarity or precision, are unsupported, or indicate a lack of understanding of the requirement. The impact of weaknesses greatly outweighs the impact of any strengths. Risk Level: Very High

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M-4.2 Adjectival Ratings for the Non Cost/Price Proposal Past Performance Factor and Subfactors

Rating	Definition
High Confidence 91-100	Essentially no doubt exists that the Offeror will successfully perform the required effort.
Significant Confidence 81-90	Little doubt exists that the Offeror will successfully perform the required effort.
Confidence 71-80	There may be some doubt due to the Offeror's past performance record, but Confidence exists that the Offeror will successfully perform the required effort.
Little Confidence 61-70	Substantial doubt exists that the Offeror will successfully perform the required effort. Changes to the Offeror's existing processes may be necessary in order to achieve contract requirements.
No Confidence 0-60	Extreme doubt exists that the Offeror will successfully perform the required effort. Apply this rating if the Offeror cannot provide any information about its past performance.

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M-4.3 Best Value Tradeoff Definitions

Term	Definition
Evaluation	The evaluators' conclusions (supported by narrative write-ups) identifying the strengths, weaknesses, and deficiencies applicable to requirements and criteria of an evaluation factor or subfactor.
Strength	Any aspect of a proposal that, when judged against a stated evaluation criterion, enhances the merit of the proposal or increases the probability of successful performance of the contract.
Significant Strength	A significant strength appreciably enhances the merit of a proposal or appreciably increases the probability of successful contract performance.
Weakness	A flaw in the proposal that increases the risk of unsuccessful contract performance.
Significant Weakness	A flaw that appreciably increases the risk of unsuccessful contract performance.
Deficiency	A material failure of a proposal to meet a Procuring Organization requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.
Meets Requirements	The item evaluated satisfies the requirement stated in the RFP or in an attached or referenced specification.

(End of Section M)