



READY Appalachia: A Community Capacity-Building Initiative

PROCUREMENT OF SERVICES

Request for Proposals for "Strategy for Appalachian Capacity Building 2025–2029"

Summary: The Appalachian Regional Commission seeks contractual support from a qualified team of strategic planners, researchers, capacity-building experts, planners, meeting facilitators, and/or writers to assist the agency in the development of a capacity-building strategy for ARC in the Appalachian Region for Fiscal Years 2025–2029. This strategy will guide ARC's work in the area of community capacity building as it seeks to invest both in the capacity of organizations/governments themselves and in local/regional capacity builders that work with these organizations.

Period of Performance: The period of performance of this work order is November 2023–November 2024.

Deadlines: ARC will receive complete responses to this solicitation exclusively via email in Portable Document Format (PDF) until **5:00 p.m. EST September 30, 2023**. Any inquiry about this solicitation must be submitted to Bettina Jones, ARC READY Program Analyst, at ready@arc.gov by 5:00 p.m. EST on September 23, 2023. ARC will not consider incomplete responses to this RFP or submittals after the date and time herein specified.

Type of Contract: ARC anticipates award of a firm-fixed-price contract.

Funding: The services sought through this RFP will be paid with funds from the Infrastructure Investment and Jobs Act, Pub. L. 117-59 (IIJA). The contractor will be paid only for work that has been authorized by ARC and performed in accordance with the work order specifications.

Payment: ARC will pay the contractor, upon the submission of proper invoices and satisfactory completion of the deliverables identified in Section D, Deliverables, the price stipulated in the contract arising from this procurement activity for services rendered and accepted, less any applicable deductions or withholdings per the U.S. Treasury Offset Program. Payment shall be made on partial deliveries accepted by ARC if (a) the amount due on the deliveries warrants it; or (b) the contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

Procurement Schedule

RFP Release Date	August 2, 2023
Deadline to submit questions regarding RFP	August 21, 2023
Questions and answers post date	September 4, 2023
Proposal due date	September 30, 2023
Contractor selection date	By November 4, 2023
Anticipated contract period	November 2023–November 2024

A. Appalachian Regional Commission Overview

The Appalachian Regional Commission (ARC or the Commission) is a regional economic development entity serving 423 counties across the Appalachian Region (the Region). Established by an act of Congress in 1965, the Commission is composed of the governors of the 13 Appalachian states, as well as a federal co-chair appointed by the President of the United States and confirmed by the Senate. Annually, the group of governors elect one governor to serve as the states' co-chair. To strengthen local participation, ARC works with the Appalachian states to support a network of multicounty planning and development organizations, or local development districts (LDDs), throughout the Region. The 74 LDDs cover all 423 counties in the Region. The LDDs help identify needs of local communities, assist with participation in ARC programs, and at times serve as pass-through entities or fiscal agents to local grantees. ARC serves a 206,000-square-mile region of 26 million people that includes all of West Virginia and parts of twelve other states: Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia.

The mission of the Appalachian Regional Commission is to innovate, partner, and invest to build community capacity and strengthen economic growth in Appalachia to help the Region achieve socioeconomic parity with the nation. The Commission funds projects that address the five goals identified in ARC's strategic plan:

1. Building Appalachian Businesses: Strengthen and diversify the region's economy through inclusive economic development strategies and investments in entrepreneurship and business development.
2. Building Appalachia's Workforce Ecosystem: Expand and strengthen community systems (education, healthcare, housing, childcare, and others) that help Appalachians obtain a job, stay on the job, and advance along a financially sustaining career pathway.
3. Building Appalachia's Infrastructure: Ensure that the residents and businesses of Appalachia have access to reliable, affordable, resilient, and energy-efficient utilities and infrastructure in order to successfully live and work in the region.
4. Building Regional Culture and Tourism: Strengthen Appalachia's community and economic development potential by preserving and investing in the Region's local cultural heritage and natural assets.
5. Building Community Leaders and Capacity: Invest in the capacity of local leaders, organizations, and communities to address local challenges by providing technical assistance and support to access resources, engage

partners, identify strategies and tactics, and conduct effective planning and project execution.

Each year, ARC provides funding for approximately 500 projects in the Appalachian Region in areas such as business development, education and job training, telecommunications, infrastructure, community development, housing, and transportation. These projects create thousands of new jobs, improve local water and wastewater systems, train the Region's workforce, assist local communities with strategic planning, and provide entrepreneurial assistance to emerging businesses. Additional information about the Appalachian Regional Commission can be found at www.arc.gov.

B. Overview of ARC's Community Capacity-Building Work and the Strategy's Purpose

Community capacity building has always been a core focus of ARC's work. In fact, "building community capacity," together with economic growth, are the only two end goals mentioned in the Commission's mission statement. This illustrates the all-encompassing nature of each term.

While ARC's commitment to building community capacity remains unchanged, the form it takes in the Commission's work has evolved over time. In years prior, ARC deployed a flex-e-grant program for individuals and organizations in several of its states. This program provided community assessments and mini-grant funding to complete community-level projects with technical assistance provided to the grantees throughout the process. This model has also been used by individual ARC grantees, including many institutions of higher education, to foster capacity building within their service areas.

In prior evaluations and studies of best practices on the topic, ARC has developed several logic models or theories of change that place capacity building at the core of its philosophy for the region's overall economic development: ARC's grants will help people, universities, businesses, organizations, governments, and communities become more effective as agents of regional economic development. These investments can take the form of training, technical assistance, catalytic funding, project implementation, and planning. ARC has also invested in direct programming in the areas of leadership development and capacity building, and this is one of its five strategic goals for 2022-2026.

The [Appalachian Leadership Institute](#), a comprehensive economic development and leadership program held annually by ARC for the last several years, focuses on capacity building/leadership development at the individual level. At the organizational capacity level, ARC has provided both administrative funding and training on an annual basis to all 74 of its local development districts (LDDs). LDDs are regional development organizations that exist to support local governments and nonprofit organizations within their service territories with economic development projects and applying for/managing federal and other types of funding. In the wake of the pandemic, these efforts were amplified through the launching of [The Community Capacity Building Pilot Program](#) and the [Appalachia Nonprofit Resource Center](#), both of which also supported capacity building at the

organizational level, including nonprofit organizations, local government staff and elected officials, and LDDs.

READY Appalachia, ARC's current community capacity-building initiative, was born out of these latest two organization-level programs, as well as the existing LDD administration program and previous flex-e-grant programs. READY Appalachia, the Appalachia Nonprofit Resource Center, and the Community Capacity Building Pilot Initiative were all formed in response to the COVID-19 pandemic and subsequent federal funding influx from the American Rescue Plan Act (ARPA), the Infrastructure Investment and Jobs Act (IIJA), and the Inflation Reduction Act (IRA), as well as the CHIPS and Science Act.

ARC recognizes that these recent increases in federal funding represent a unique opportunity for its communities to develop economically; ARC also understands that many communities lack the organizational and human capacity to take full advantage of this opportunity. It is thus the aim of READY Appalachia to remove any barriers for communities and organizations to benefit from this funding, and to ensure that underserved communities and organizations are not excluded from these benefits due to lack of capacity. (For the purposes of READY Appalachia, "underserved" communities and organizations refer to those that are under-resourced, those that have not interacted with ARC before, those that are located in [economically distressed areas](#) and/or [Interagency Working Group on Coal and Power Plant Priority Communities](#), and organizations serving historically marginalized populations). Also recognizing that capacity building at its core relies on the skills of individuals, ARC realizes any community capacity-building strategy it pursues must include study of and recommendations for the Appalachian Leadership Institute, ARC's flagship adult leadership development program aimed at individual community leaders.

For such a monumental task, deliberate thought and planning for capacity building is necessary to systematically respond directly to the Appalachian Region's capacity needs. A community capacity-building strategy will help ARC determine its direction for the next several years, informing programming and grantmaking to help communities effect truly transformational change.

ARC foresees seven main phases of this planning process, excluding kickoff and planning work:

1. Project Scoping and Planning
2. Literature/Document Review
3. Gap Analysis
4. Action Plan Development
5. Actionable Outreach Plan
6. Capacity Building Performance Measures
7. Strategic Plan 2025–2029

The stages are described in more detail in the Scope of Work, below.

C. Scope of Work

As currently envisioned, the scope of work includes the following activities and deliverables.

I. Project Scoping and Planning—Kickoff and Work Plan Development

The contractor will host a kickoff meeting with the ARC Steering Committee to finalize a work plan for the development of the full strategy that corresponds to the deliverables and timelines outlined in this Solicitation for Services. (Please see the Schedule of Deliverables in Section D).

II. Literature/Document Review

The contractor will conduct a literature/document review of foundational capacity building literature, as well as ARC internal and external documentation and resources from other organizations on the subject of capacity building.

1. Conduct a literature review of foundational research to produce an acceptable nomenclature to define capacity building suitable to the context of the Appalachian communities' needs. ARC will make available to the contractor existing documentation associated with ARC capacity-building programs for their review and foundational information.
2. Analyze and evaluate historic data of ARC programs aimed at developing capacity in the Appalachian Region and report findings.
 - The contractor will focus on READY Appalachia, the Appalachia Nonprofit Resource Center, the Appalachian Leadership Institute, and the Community Capacity-Building Pilot Initiative, and complete a scan of previous or current work (i.e., flex-e-grant program, LDD Administration Grant program, and various related Area Development projects).
 - The contractor must also provide a summary and analysis of standing and ad hoc technical assistance offerings by ARC to grantees, including ARC-led application workshops, convenings, online tools and resources, and opportunities to interact with ARC staff, given the significant role technical assistance provision plays within broader capacity-building efforts.
3. Conduct a review of federal government capacity-building benchmarking. The contractor must identify and examine capacity-building programs in the federal government of similar scope and scale assisting communities with similar needs and similar profile (e.g., USDA's Rural Partners Network, EPA's EJTCTACs, EDA's Economic Recovery Corps, HUD/DOT's Thriving Communities Program).
4. Conduct a review of federal government technical assistance benchmarking. The contractor must identify and examine existing technical assistance programs in the federal government of similar scope and scale aimed at assisting communities access their opportunities for federal financial assistance.
5. Conduct a review of private and non-profit sector capacity-building benchmarking. The contractor must identify and examine capacity-building programs in the private sector of similar scope and scale aimed at assisting communities with similar needs as the communities in Appalachia (e.g., Just

Transition Fund's Federal Access Center; Bloomberg's Local Infrastructure Hub).

III. Gap Analysis

The contractor will produce a gap analysis for ARC focused on common thematic capacity gaps in the Appalachian Region. The gap analysis/findings will be based, at a minimum, on input from the following:

1. ARC stakeholder input (interviews and focus groups): Appalachian state ARC offices, ARC federal office, local development districts, ARC Federal Co-chair
2. Broader ARC community input (public online surveys, focus groups, interviews): Participants in READY Appalachia, the Community Capacity Building Pilot Initiative, and the Appalachian Leadership Institute, including individuals, local governments, nonprofit organizations, community foundations.
3. The contractor will separately organize interviews/focus groups focused on organizational and community capacity-building stakeholders generally (i.e., those who have not participated in ARC capacity-building programming) when putting together the interviews and focus groups, including at a minimum the following groups: nonprofit organizations, LDDs, community foundations, local governments, community leaders, community capacity builders (e.g., subject matter experts; organizations doing this type of work regionally), elected officials, etc.

IV. Development of Action Plan

Contractor will create an action plan for ARC for 2025–2029 with findings and recommendations based on the gap analysis and data sets examined. The recommendations must be framed in actionable activities that can be carried out by ARC. These actions will be recommendations for future programming.

Representative areas that the contractor must address are the following:

- Overall goals and objectives/theory of change for capacity building in the ARC region in a logic model format.
- Potential future READY Appalachia program offerings.
- Potential future Appalachian Leadership Institute offerings.
- Modifications to existing programs including READY Appalachia, Technical Assistance, Appalachian Leadership Institute, and community capacity-building more broadly.
- Funding priorities and ways to structure new or different capacity-building funding programs.
- Training possibilities, both in terms of subject matter and structure.
- Developing support for communities in accessing, successfully applying for, and managing/implementing grants under ARC and other agency programs and engaging with these agencies (including how the capacity-building strategy can interact with the work of ARC's Technical Assistance Team).
- Providing recommendations to ARC regarding what types of projects should be prioritized for funding through existing programs.
- Any other recommendations or ideas that come to light through the contractor's research process.

V. Actionable Outreach Plan

The contractor will design a methodology for ARC to identify and prioritize “underserved communities” during the period 2025–2029. The contractor shall also produce an actionable outreach plan to serve these “underserved communities” for that specified period. For the purposes of READY Appalachia, “underserved” communities and organizations refer to those that are under-resourced, those that have not interacted with ARC before, those that are located in [economically distressed areas](#) and/or [Interagency Working Group on Coal and Power Plant Priority Communities](#), and organizations serving historically marginalized populations.

VI. Capacity-Building Performance Measures

Contractor will identify and recommend evidence-based and preferably quantifiable performance measures for organizational and individual capacity building beyond [ARC current performance metrics](#).

VII. Strategic Plan 2025–2029 Adoption

Contractor will produce a draft of a recommended strategic plan for 2025–2029 for the ARC Steering Committee. The Committee will review and provide comments pursuant to the schedule provided in Section D. The contractor will then present the Strategic Plan to the Commission with its recommendations, gather input from the Commission, and will then produce a final report that incorporates the Commission’s input. The final report shall be consistent with approved ARC communications standards.

D. Schedule of Deliverables*

*Dates are tentative and subject to change upon negotiation with the selected contractor.

All deliverables are subject to ARC review and approval.

Date	Deliverable
Mid-November 2023	Kickoff meeting with ARC Steering Committee
Throughout contract period	Biweekly meeting with ARC principal(s)
December 15, 2023	Final detailed work plan/schedule due to ARC
February 16, 2024	Draft document/literature review due to ARC
February 16, 2024	Draft public survey due to ARC
March 1, 2024	Public survey open
April 12, 2024	Public survey close
March 15, 2024	Draft focus group proposed organization and interview questions/protocols due to ARC
April–May 2024	Focus groups/interviews held**
July 12, 2024	Draft gap analysis due to ARC

August 16, 2024	Draft of full plan due to ARC (action plan, outreach strategy, definitions, performance measures)
August 16, 2024	Presentation of draft of full plan/report to advisory committee for comment
At ARC Annual Conference 2024 Commission Meeting	Presentation of draft of full plan/report to Commission for comment
October 25, 2024	Final full strategy due to ARC
November 2024	Contract close

****ARC asks contractors to provide recommendations for virtual versus in-person data gathering methods according to their expertise.**

E. Proposal Submission Instructions

Proposals must include a technical proposal, management proposal, and cost estimate for all work to be conducted.

The technical proposal should describe the research methodology that the contractor proposes to use.

I. Technical Proposal

- Contractor will elaborate on their proposed methods for organizing and carrying out the foreseen scope of work (found in Section C).
- Contractor will add, as an attachment, a sample focus group protocol, an interview protocol, and public survey questions that they may use.
- Contractor will discuss their preliminary proposed methodology for determining underserved entities that should be a target of ARC’s capacity-building efforts and their suggested approach to developing a plan to outreach to them with ARC’s capacity-building programs, technical assistance, leadership development, and other programs, including the contractor’s proposed approach to mixing virtual with in-person data-gathering methods.
- Contractor will describe their proposed approach for providing a definition of capacity building for ARC and for developing suggested performance measures related to capacity building.
- Contractor will elaborate on their methods for ensuring representation of underserved groups in the research process itself, including organizations, governments, and individuals from [distressed areas](#); Interagency Working Group on Coal and Power Plant Communities [priority communities](#); smaller, under-resourced, and difficult to reach populations and organizations; and historically marginalized populations.

II. Management Proposal

The management proposal should elaborate on the contractor’s methods for organizing and managing the capacity building strategy project. The proposal must clearly provide a detailed description of the following:

- The organization and any proposed subcontractors.
- Relevant experience in the Appalachian Region, particularly with research,

impact measurement/evaluation, strategic planning, working with underserved groups and organizations, and/or capacity building.

- Description(s) of the qualifications and credentials of the personnel performing the work, including professional classifications (e.g., project director, meeting facilitator, instructor, etc.). The proposal must identify the relationship of key project personnel to the applicant (i.e., staff, consultants, or subcontractors). Brief resumes of the education and professional experience of key personnel must be added as attachments. Resumes shall not include address, phone number, or other personal identifiable information. Any change in key personnel is subject to approval by ARC.
- As an attachment, please submit a work plan addressing the scope of work set forth in Section C, including regular meetings, presentations, and key deliverables (including preliminary drafts for review) against a specific timeline. Please include specific dates (instead of only the month and year) for all activities to be completed in 2023 and 2024.
- As an attachment, submit a staffing plan that describes the proposed staff distribution to accomplish this work, including a time commitment and proposed activities of each professional staff member to the project's tasks and schedule. This staffing plan must match the attached work plan.
- A description of the three most similar projects that have been undertaken by the contractor (or subcontractor if applicable), and related references, including names and contact information. A submittal of this information shall be construed as an implied consent for ARC to contact those entities or individuals without further consent from the offeror.
- Any unique requirements your organization would like included in the contract, if selected.

III. Cost Estimate

Cost estimates must include hourly and/or daily rates of all team members and estimated costs of travel for community input sessions and work sessions. Proposals must also factor in time for biweekly video conference calls with the steering committee throughout the process.

Proposals should not include a budget for logistical support for any live community input sessions or work sessions with ARC staff, travel support for community members and invited guests, audio-visual needs, meeting space rental, food and refreshments, printing of handouts, or mass printing and distribution of the strategic plan. It is anticipated that ARC and its local/state partners will provide logistical and administrative support for all events, including communications, registration (both advance and onsite), meeting space rental, food/refreshments, audio-visual needs, and printing costs.

Offerors shall clearly mark “confidential” all documents with information customarily treated as private by the offeror. It includes trade secrets and information that is proprietary, commercial, and financial in nature.

F. Proposal Submission

Proposals are due on or before 5:00 p.m. EST on September 30, 2023.

I. Required Documents:

1. Proposal narrative and applicable technical, managerial, and cost elements of the proposals.
2. A self-certification signed by an authorized officer of the offeror attesting to having read and understood all the Warranties and Representations set forth in Section G of this RFP.
3. A written statement acknowledging and consenting that the provisions set forth in Section G will be incorporated into the contract arising from this solicitation as contract clauses.
4. Three (3) references (contact information) of past clients who contracted with the offeror on projects of similar or greater scope of work.

II. Submissions

1. Submissions MUST be sent via email as one PDF file to ready@arc.gov, addressed to: Bettina Jones, Program Analyst, Community Capacity.
2. Responses or unsolicited amendments will not be accepted after the closing date and time.
3. Requests for time extensions past any deadlines will not be considered.

III. Proposal Evaluation

ARC will select contractors through a competitive process based on the following criteria:

1. Background and experience in strategic planning and economic development;
2. Meeting design expertise, facilitation skills, and group process skills;
3. Background and experience working with Appalachian communities;
4. Background and experience working with rural and/or economically distressed communities;
5. Deep expertise in the field of capacity building/leadership development;
6. Relevance of references and associated projects;
7. Quality of writing, based on samples of work (e.g., surveys, focus group and interview protocols and other documents, as well as written analysis of data);
8. Use of technology (i.e., surveys; web-conferencing) to facilitate input from community/stakeholders;
9. Creativity and innovation; and
10. Cost effectiveness of proposal.

ARC will not consider incomplete proposals, including but not limited to proposals that do not adequately address the scope of work or fail to produce the documentation identified herein.

G. Warranties and Representations

1. **Certificate of Independent Price Determination.** The offeror certifies that-(a) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any

other offeror or competitor relating to (i) Those prices; (ii) The intention to submit an offer; or (iii) The methods or factors used to calculate the prices offered. (b) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before contract award unless otherwise required by law; and (c) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

2. **Certificate of Binding Authority.** Each signature on the offer is considered to be a certification by the signatory that the signatory-(a) Is the person in the offeror's organization responsible for determining the prices being offered in this proposal, and that the signatory has not participated and will not participate in any action contrary provisions set forth in the preceding paragraph; or (b) Has been authorized, in writing, to act as agent of the offeror in certifying that the offeror (and/or its principals) has not participated or will participate in any action contrary to the provisions set forth in the preceding paragraph.
3. **Gratuities.** The offeror certifies that it has not offered or gave a gratuity to any ARC staff or its agents, nor has intended, by gratuity, to obtain a contract or favorable treatment under a contract. If the contract arising from this solicitation is terminated due to a finding of a gratuity, ARC will be entitled to pursue the same remedies as in a breach of the contract, and in addition to any other damages provided by law, to exemplary damages up to 3 times the cost incurred by the contractor in giving gratuities to the concerned person. The rights and remedies available to ARC under this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.
4. **Covenant Against Contingent Fees.** The offeror acknowledges and warrants that no person or agency has been employed or retained to solicit or obtain a contract from this solicitation upon an agreement or understanding for a contingent fee, except for a bona fide agency or employee of the contractor or supervised by the contractor who neither exerts nor proposes to exert improper influence to solicit or obtain ARC contracts nor holds out as being able to obtain any ARC contract or contracts through improper influence. Improper influence, for purposes of this provision, means any influence that induces or tends to induce an ARC employee or officer to give consideration or to act regarding an ARC contract on any basis other than the merits of the matter.
5. **Restrictions on Subcontractor Sales to ARC.** The offeror acknowledges that if awarded a contract under this solicitation it shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to ARC of any item or process made or furnished by the subcontractor under this contract or under any follow-on production contract. Notwithstanding the above, the contractor is not precluded from asserting rights that are otherwise authorized by law or regulation. For purposes of this paragraph, the restriction applies only to the extent that any agreement restricting sales by subcontractors results in ARC being treated differently from any other prospective purchaser for the sale of the commercial product and/or commercial service(s).
6. **Anti-kickbacks Procedures.** The offeror warrants to have in place and follow reasonable procedures designed to prevent and detect kickbacks in its own operations and direct business relationships. *Kickback*, as used here, means any

money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any ARC employee or contractor or subcontractor for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract with ARC or in connection with a subcontract relating to a prime contract with ARC. The forbidden kickback conduct shall include (a) Providing or attempting to provide or offering to provide any kickback; (b) Soliciting, accepting, or attempting to accept any kickback; or (c) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to ARC or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

The Contractor shall cooperate fully with ARC's Office of the Inspector General and any Federal agency investigating a possible violation.

7. Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.

- (a) If ARC receives information that a contractor or a person has knowingly obtained contractor bid or proposal information or source selection information before the award of an ARC procurement contract to which the information relates, ARC may- (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or (2) Rescind the contract with respect to which- (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct violates 41 U.S.C. 2102 for the purpose of either- (ii) Exchanging the information covered by such subsections for anything of value; or obtaining or giving anyone a competitive advantage in the award of an ARC or Federal agency procurement contract.
- (b) If ARC rescinds the contract under paragraph (a) of this provision, the ARC is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of ARC specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

8. Price or Fee Adjustment for Illegal or Improper Activity. ARC, at its election, may reduce the price of the firm- fixed-price contract if the Executive Director (ARC's Executive Director) or its designee determines that there was a violation of the integrity of the procurement process. . The price adjustment will be by 10 percent of the initial contract price determined by the Executive Director or its designee from records or documents in existence prior to the date of the contract award. ARC may, at its election, reduce a prime contractor's price for violations of the procurement integrity by its subcontractors by an amount not to exceed the amount of the fee reflected in the subcontract at the time the subcontract was first definitively priced. The rights and remedies of ARC specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

9. Certification and Disclosure Regarding Payments to Influence Certain Federal Transaction. The offeror, by signing its offer, certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of ARC, any agency, a Member of Congress, an officer or employee of Congress, or an

employee of a Member of Congress on its behalf in connection with the awarding of a contract related to this procurement action.

If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to a contract related to this procurement activity, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

10. **Limitation on Payments to Influence Certain Federal Transactions.** 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay 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 any covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds to pay 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 award of this contractor the extension, continuation, renewal, amendment, or modification of this contract. Exceptions recognized in FAR 52.203-12 are herein incorporated by reference. By submitting a complete response the offeror certifies to ARC that it is aware of this requirement and to be in full compliance with it.

11. **Contractor Code of Business Ethics and Conduct.** The offeror awarded a contract pursuant to this procurement activity (the Contractor), shall, within 60 days after the award of the contract, have a written code of business ethics and conduct, and make a copy of the code available to each employee engaged in performance of the contract. The Contractor shall exercise due diligence to prevent and detect criminal conduct; and otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

The Contractor shall timely disclose, in writing, to the ARC Office of the Inspector General (OIG), with a copy to the Program Manager, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code.

12. **Preventing Personal Conflicts of Interest.**

A. The contractor shall-

- (1) Have procedures in place to screen covered employees for potential personal conflicts of interest, by (i) Obtaining and maintaining from each covered employee, when the employee is initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows: (A) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household. (B) Other

employment or financial relationships of the covered employee (including seeking or negotiating for prospective employment or business). (C) Gifts, including travel; and (ii) Requiring each covered employee to update the disclosure statement whenever the employee's personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing.

- (2) For each covered employee (i) Prevent personal conflicts of interest, including not assigning or allowing a covered employee to perform any task under the contract for which the contractor has identified a personal conflict of interest for the employee that the contractor or employee cannot satisfactorily prevent or mitigate in consultation with ARC; (ii) Prohibit use of non-public information accessed through performance of ARC contract for personal gain; and (iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of the ARC contract.
- (3) Inform covered employees of their obligation- (i) To disclose and prevent personal conflicts of interest; (ii) Not to use non-public information accessed through performance of an ARC contract for personal gain; and (iii) To avoid even the appearance of personal conflicts of interest;
- (4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;
- (5) Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this clause;
- (6) Report to the ARC Program Manager any personal conflict-of-interest violation by a covered employee as soon as it is identified. This report shall include a description of the violation and the proposed actions to be taken by the contractor in response to the violation. Provide follow-up reports of corrective actions taken, as necessary; and
- (7) Include the substance this provision in any subcontract that exceeds the simplified acquisition threshold, as defined in the Federal Acquisition Regulation 2.101 on the date of the contract and in which subcontractor employees will perform acquisition functions closely associated with inherently governmental functions.

B. Definitions. For purpose of this Section, the following terms have the meaning herein provided:

1. Personal conflict of interest means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the Government or ARC when performing under the contract. Personal conflict-of-interest violations include- (i) Failure by a covered employee to disclose a personal conflict of interest; (ii) Use by a covered employee of non-public information accessed through performance of an ARC contract for personal gain; and (iii) Failure of a covered employee to comply with the terms of a non-disclosure agreement.

A covered employee means an individual who performs an acquisition function closely associated with inherently governmental functions and is an employee of the contractor or subcontractor that is a self-employed individual treated as a covered employee of the contractor because there is no employer to whom such an individual could submit the required disclosures.

2. Acquisition function closely associated with inherently governmental functions

means supporting or providing advice or recommendations with regard to the following activities of ARC:

- (a) Planning acquisitions.
- (b) Determining what supplies or services are to be acquired by ARC, including developing statements of work.
- (c) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.
- (d) Evaluating contract, grant or program proposals.
- (e) Awarding Government contracts.
- (f) Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services and accepting or rejecting program applications).
- (g) Terminating contracts.
- (h) Determining whether contract costs are reasonable, allocable, and allowable.

13. **Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights.** The contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 USC 4712. Furthermore, the contractor shall include this provision in all subcontracts over the simplified acquisition threshold as defined in the FAR 2.101 on the date of the subcontract award.

14. **Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation.** The offeror acknowledges that ARC will not enter into a contract with an entity that requires its employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of ARC authorized to receive such information.

The offeror acknowledges that if awarded a contract it shall not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of the ARC contract to a designated investigative or law enforcement representative of an ARC authorized to receive such information (e.g., the Office of the Inspector General). As an ARC contractor, the entity acknowledges that has the responsibility to include the substance of this provision in subcontracts under an ARC contract.

By submission of its offer, the offeror represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of an ARC contract to a designated investigative or law enforcement representative of the Federal Government or ARC authorized to receive such information (e.g., ARC's Office of the Inspector General).

15. **Continuity of Service.** The contractor recognizes that the services under the contract arising from this procurement activity are vital to ARC and must be continued without interruption and that, upon contract expiration, a successor, either ARC or another contractor, may continue them. The contractor agrees to-
- (1) Furnish phase-in training; and
 - (2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The contractor shall, upon the Program Manager's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Program Manager's approval. The contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- (c) The contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- (d) The contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

16. **Government Supply Sources.** The Program Manager may issue the contractor an authorization to use ARC supply sources in the performance of this contract. Title to all property acquired by the contractor under such an authorization shall vest in ARC

The provisions of the clause at FAR 52.245-1, "Government Property", are hereby incorporated by reference provided that whenever the clause refers to the "Government" it will be construed as ARC and references to the "Contracting Officer" must be construed as ARC's Program Manager.

17. **Refund of Royalties-** The contract price shall include, where applicable, certain amounts for royalties payable by the contractor or subcontractors or both, which amounts have been reported to the Program Manager. The term "royalties" as used in this provision refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder. The contractor shall furnish to the Program Manager, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons. The contractor will be compensated for royalties reported under this paragraph, only to the extent that such royalties were included in the contract price and are determined by the Program Manager to be

properly chargeable to ARC and allocable to the contract. To the extent that any royalties that are included in the contract price are not in fact paid by the contractor or are determined by the Program Manager not to be properly chargeable to ARC and allocable to the contract, the contract price shall be reduced. Repayment or credit to ARC shall be made as the Program Manager directs. If, at any time within 3 years after final payment under this contract, the contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to this provision, the contractor shall promptly notify the Program Manager of that fact and shall reimburse ARC in a corresponding amount. The substance of this provision shall be included in any subcontract.

Should the response to this solicitation contain costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:

- (1) Name and address of licensor.
- (2) Date of license agreement.
- (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.
- (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.
- (5) Percentage or dollar rate of royalty per unit.
- (6) Unit price of contract item.
- (7) Number of units.
- (8) Total dollar amount of royalties.

(b) Copies of current licenses. In addition, if specifically requested by the Program Manager before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

18. **Suspension of Work.** The Program Manager may order the contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Program Manager determines appropriate for the convenience of ARC. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Program Manager in the administration of the contract, or (2) by the Program Manager's failure to act within the time specified in this contract, an adjustment may be made for any increase in the cost of performance of this contract necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this provision for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of the contract arising from this procurement activity.

19. **Permits and Responsibilities.** The contractor shall, without additional expense to ARC, 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 occur 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 acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

20. **Insurance-Liability to Third Persons.** The contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Program Manager may require under this contract.

All insurance required by this paragraph shall be in a form and amount and for those periods as the Program Manager may require or approve and with insurers approved by the Program Manager.

The contractor agrees to submit for the Program Manager's approval, to the extent and in the manner required by the Program Manager, any other insurance that is maintained by the contractor in connection with the performance of the contract arising from this procurement activity and for which the contractor seeks reimbursement.

The contractor will be reimbursed for that portion of the reasonable cost of insurance allocable to this contract; and required or approved under this provision. The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities) (1) For which the contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract; (2) For which the contractor has failed to insure or to maintain insurance as required by the Program Manager; or (3) That result from willful misconduct or lack of good faith on the part of any of the contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of (i) All or substantially all of the contractor's business; or (ii) All or substantially all of the contractor's operations at any one location in which this contract is being performed.

ARC's liability under this provision is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under the contract arising under this procurement activity, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall-(1) Immediately notify the Program Manager and promptly furnish copies of all pertinent papers received; (2) Authorize ARC representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and (3) Authorize ARC representatives to settle or defend the claim and to represent the contractor in or to take charge of any litigation, if required by ARC, when the liability is not insured. The contractor may, at its own expense, be associated with ARC representatives in any such claim or litigation.

21. **Privacy or Security Safeguards.** (a) The contractor shall not publish or disclose in any manner, without the Program Manager's written consent, the details of any safeguards either designed or developed by the contractor under this

contract or otherwise provided by ARC.

- (b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of ARC data, the contractor shall afford ARC access to the contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.
- (c) If new or unanticipated threats or hazards are discovered by either ARC or the contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

22. **Rights in Data-General**

a) Definitions. As used in this provision-

Computer database or "database means" a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software- (1) Means

- (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and
- (ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

Limited rights means the rights of ARC in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3).

Limited rights data means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

Restricted computer software means computer software developed at private

expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

Restricted rights, as used in this clause, means the rights of ARC in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this provision, including minor modifications of such computer software.

Technical data means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 116).

Unlimited rights means the rights of ARC to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights. (1) Except as provided in paragraph (c) of this provision, ARC shall have unlimited rights in-

- (i) Data first produced in the performance of this contract;
- (ii) Form, fit, and function data delivered under this contract;
- (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
- (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this provision.

(2) The contractor shall have the right to-

- (i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this provision;
- (ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
- (iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
- (iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

Copyright- (1) Data first produced in the performance of this contract. (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Program Manager, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Program Manager is

required to assert copyright in all other data first produced in the performance of this contract.

- (ii) When authorized to assert copyright to the data, the contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of ARC sponsorship (including contract number).
 - (iii) For data other than computer software, the contractor grants to ARC, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of ARC. For computer software, the contractor grants to ARC, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of ARC.
- (2) Data not first produced in the performance of this contract. The contractor shall not, without the prior written permission of the Program Manager, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the contractor-
- (i) Identifies the data; and
 - (ii) Grants to ARC, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this provision or, if such data are restricted computer software, ARC shall acquire a copyright license as set forth in paragraph (g)(4) of this provision (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of the contract arising from this procurement activity.
- (3) Removal of copyright notices. ARC will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.
- (c) Release, publication, and use of data. The contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, except-
- (1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);
 - (2) As expressly set forth in the contract arising from this procurement activity;
- or
- (3) If the contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Program Manager.
- (d) Unauthorized marking of data. (1) Notwithstanding any other provisions of the contract arising from this procurement activity concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3), the Program Manager may at any time either return the data to the contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 4703, the following procedures shall apply prior to canceling or ignoring the markings.

- (i) The Program Manager will make written inquiry to the contractor affording the contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (ii) If the contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Program Manager for good cause shown), ARC shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
 - (iii) If the contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this provision, the Program Analyst will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Program Analyst determines that the markings are authorized, the contractor will be so notified in writing. If the Program Analyst determines, with concurrence of the ARC Division Director, that the markings are not authorized, the Program Manager will furnish the contractor a written determination, which determination will become the final ARC decision regarding the appropriateness of the markings unless the contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Program Analyst's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Program Analyst's determination becoming final (in which instance ARC will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
- (2) The time limits in the procedures set forth in paragraph (e)(1) of this provision may be modified by ARC implementing procedures to respond to the Freedom of Information Act (5 U.S.C. 552) inquiries.
- (3) Except to the extent ARC's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the contractor is not precluded by paragraph (e) from bringing a concern to the Executive Director.
- (e) Omitted or incorrect markings. (1) Data delivered to ARC without any restrictive markings shall be deemed to have been furnished with unlimited rights. ARC is not liable for the disclosure, use, or reproduction of such data.
- (2) If the unmarked data has not been disclosed without restriction outside ARC, the contractor may request, within 6 months after delivery of the data, permission to have authorized notices placed on the data at the contractor's expense. The Program Analyst may agree to do so if the contractor-
- (i) Identifies the data to which the omitted notice is to be applied;
 - (ii) Demonstrates that the omission of the notice was inadvertent;
 - (iii) Establishes that the proposed notice is authorized; and
 - (iv) Acknowledges that ARC has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

- (3) If data has been marked with an incorrect notice, the Program Analyst may-
 - (i) Permit correction of the notice at the contractor's expense if the contractor identifies the data and demonstrates that the correct notice is authorized; or
 - (ii) Correct any incorrect notices.
- (f) Protection of limited rights data and restricted computer software.
 - (1) The contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this provision. As a condition to this withholding, the contractor shall-
 - (i) Identify the data being withheld; and
 - (ii) Furnish form, fit, and function data instead.
 - (2) Limited rights data that are formatted as a computer database for delivery to ARC shall be treated as limited rights data and not restricted computer software.
 - (3) Notwithstanding paragraph (g)(1) of this provision, the contract may identify and specify the delivery of limited rights data, or the Program Analyst may require by written request the delivery of limited rights data that has been withheld or would otherwise be entitled to be withheld. If delivery of that data is required, the contractor shall affix the following "Limited Rights Notice" to the data and ARC will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

"Limited Rights Notice"

These data are submitted with limited rights under ARC Contract No. ____ (and subcontract, if appropriate). These data may be reproduced and used by ARC with the express limitation that they will not, without written permission of the contractor, be used for purposes of manufacture nor disclosed outside ARC; except that ARC may disclose these data outside ARC for the following purposes, if any; provided that ARC makes such disclosure subject to prohibition against further use and disclosure:

- (a) This notice shall be marked on any reproduction of these data, in whole or in part.
- (g) Subcontracting. The contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the contractor's obligations to ARC under this contract. If a subcontractor refuses to accept terms affording ARC those rights, the contractor shall promptly notify the Program Manager of the refusal and shall not proceed with the subcontract award without authorization in writing from the Program Manager.
- (h) Relationship to patents or other rights. Nothing contained in this provision shall imply a license to ARC under any patent or be construed as affecting the scope of any license or other right otherwise granted to ARC.

23. **Privacy Act.** The Contractor agrees to (1) Comply with the Privacy Act of 1974 (the Act) in the design, development, or operation of any system of records on individuals to accomplish an ARC function when the contract specifically identifies-
- (i) The systems of records; and
 - (ii) The design, development, or operation work that the contractor is to perform;
- (2) Include a Privacy Act notification in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and (3) Include this provision in all subcontracts awarded under

this contract which requires the design, development, or operation of such a system of records.

"Operation of a system of records," as used in this provision, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records. "Record," as used in this provision, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph. "System of records on individuals," as used in this provision, means a group of any records under the control of ARC from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.