



**READY Appalachia: A Community
Capacity-Building Initiative**
Community Foundations Training Program

PROCUREMENT OF SERVICES
Request for Proposals for Program Training and
Administration Services

Summary: The Appalachian Regional Commission (ARC or the Commission) is requesting proposals from qualified contractors to provide services on a firm-fixed-price basis to administer the **READY Appalachia: Community Foundations Training Program**. The contractor shall provide support services to ARC that include all management, supervision, and labor for the training program, and shall plan, schedule, coordinate, and assure effective performance of all objectives, including but not limited to the training sessions, as outlined in Sections C and D, Scope of Work and Training Requirements, respectively.

Period of Performance: The period of performance of this work order is December 2023–April 2025.

Deadlines: ARC will accept complete responses to this solicitation exclusively via email in Portable Document Format (PDF) until **5:00 p.m. EST on October 6, 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 30, 2023. ARC will not consider incomplete responses to this RFP or submittals after the date and time herein specified.

Procurement Schedule

Date	Activity
Aug. 2, 2023	Solicitation released
Oct. 6, 2023	Deadline to submit complete proposals (responses to the solicitation)
Oct. 23–Nov. 3, 2023	Interview finalist offerors
Nov. 17, 2023	Notify selected offeror
Dec. 1, 2023	Contract execution
December 1, 2023	Period of performance begins

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

Funding: The services sought through this RFP will be paid for 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 C, 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.

Section A. Appalachian Regional Commission Overview

The Appalachian Regional 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. 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 ARC 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 ARC can be found at www.arc.gov.

Section B. READY Appalachia: A Community Capacity-Building Initiative

B.1 - Program Background

The Infrastructure Investment and Jobs Act (IIJA) appropriated \$1 billion over a period of five years for ARC investments. In addition to the funds appropriated to ARC, the IIJA includes \$549 billion in new funds for infrastructure development across the country. Furthermore, the American Rescue Plan Act State and Local Fiscal Recovery Funds (ARPA SLFRF) has made available \$350 billion to states, territories, and tribal and local governments to support recovery and response related to the COVID-19 pandemic. In addition, the Inflation Reduction Act (IRA) will invest \$369 billion across the country in energy security and climate change programs. This unprecedented level of resources has the potential to be transformative, particularly in Appalachia, which historically has seen less investment in infrastructure, business development, and other areas due to having, on average, lower incomes, less robust markets, and smaller tax bases than many other parts of the country. It is envisioned that these funds will help communities make transformational changes to their economies, allowing them to address their longstanding socioeconomic challenges.

Acknowledging the needs of the Region during this time, ARC first invested in a pilot program to help Appalachian local governments and local development districts (LDDs) learn and share best practices and information needed to strategically deploy ARPA SLFRF funding in ways that spark long-lasting economic change. This pilot program, which concluded in September 2022, consisted of five two-part virtual trainings and created virtual communities of practice for LDDs to share best practices and gain support from experts as they help communities leverage and manage ARPA local fiscal recovery funds. A lesson learned from the pilot program is the persistent need in local governments and organizations for technical assistance and capacity building that enables them to tap into the wide range of resources now available to Appalachian communities.

In response to these persistent needs, ARC allocated \$10 million in 2022 to provide Appalachian communities with additional technical assistance and funding that would enable them to take fuller advantage of IIJA and ARPA funds, as well as other federal funding sources, and contribute to their overall capacity development. This initiative has been designated “READY Appalachia: A Community Capacity-Building Initiative” (hereafter “The Initiative” or “READY Appalachia”). READY Appalachia provides direct technical assistance and funding to support four key pillars of economic development in the region: Appalachian local governments, local development districts (LDDs), nonprofit organizations, and community foundations. Across the entire program, special consideration will be given to entities serving [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. The funding source for this program is ARC’s appropriation from the Infrastructure Investment and Jobs Act for Fiscal Year 2022, which has already been appropriated.

The procurement activity covered by this document focuses exclusively on providing technical assistance and capacity-building support to community

foundations in Appalachia. More specifically, this solicitation invites proposals from qualified contractors to carry out the training component of the **READY Appalachia: Community Foundations Training Program**.

B.2 - Program Purpose

The purpose of the **READY Appalachia: Community Foundations Training Program** is to train local community foundation executives, as well as their staffs and board members, in effective operations, fundraising, and programming specific to community foundations.

ARC recognizes that in many areas of Appalachia, community foundations represent the only philanthropic option. They serve as critical supporters of small local nonprofit organizations and local governments, while other types of philanthropy may bypass Appalachia due to its rural character and perceived lower return-on-investment in terms of populations impacted. Through this initiative, ARC aims to support the community foundations sector to develop organizational capacity and leverage other resources to improve quality of life and foster economic development in their communities. To do so, the READY Appalachia Community Foundations Training Program will train leaders of community foundations in best practices and day-to-day community foundation management. Such skills will enable them to better serve the underserved communities of Appalachia and maintain themselves organizationally over time, building out the community/place-based philanthropy sector more generally across Appalachia. Through this initiative, ARC also seeks to address historic inequities for marginalized, underserved, and underrepresented communities, who will be given preference in the selection process.

This training program will build on the technical assistance already being provided to Appalachian nonprofit organizations through ARC's READY Nonprofits initiative, which is also part of the overall READY Appalachia initiative. This training program will build on that technical assistance insofar as the overall model for the training will be the same, while the individual courses will differ. ARC recognizes that providing assistance specific to community foundations represents long-term investment into underserved Appalachian nonprofit organizations and governments. ARC understands that community foundations provide assistance that includes not only direct grants, but also support with grant management, training, technical assistance, connection to resources, and many other offerings.

B.3 - Program Description

The **READY Appalachia: Community Foundations Training Program** comprises two components.

The first element is a *training program* (the part covered by this solicitation) by which participants learn and improve their skills in all matters related to the successful operation of and capacity-building strategies specific to community foundations.

The second element is a *financial assistance program* sponsored by ARC in which participants apply the lessons learned during the training program by going through the complete life cycle of a financial assistance award made by ARC. This financial assistance award, up to \$25,000 for each entity, will be a flexible capacity-building financial assistance with optional match commitment for the community

foundation itself, which can focus on a need identified during the training component. (Construction and funding endowments for grantmaking activities for the community foundations will not be allowable). **This RFP is limited to the first component: the training component of READY Appalachia: Community Foundations Training Program.** The program will help community foundations develop the skills necessary for successful management of a philanthropic organization, both in terms of operations and programmatic offerings to local nonprofit organizations and governments. The training element of the program thus focuses on providing high-quality, actionable skill development to community foundation executives, staff, and board members. Section D of this solicitation, entitled “Training Requirements,” provides detail on the specific skills ARC is requesting to be covered by the training program. Through this initiative, ARC also seeks to address historic inequities for marginalized, underserved, and underrepresented communities, who will be given preference in the selection process.

B.4 - Program Objectives

1. Train community foundation executives, staff, and board members in skills fundamental to successful management of a community foundation, from fundraising strategies to grantmaking programs. **A complete list of the skills to be covered by the training program is provided in Section D, Training Requirements.**
2. Address the historic inequities of marginalized, underserved, and underrepresented communities by prioritizing these communities for participation in the program (See Section B.5.1, Eligible Participants).
3. Invest directly in the community philanthropic sector’s capacity development as a crucial partner to ARC in advancing its mission. While there may be some similarities to the existing READY Nonprofit training, the philanthropic sector requires specialized training to meet its specific needs (for example, financial systems required for grantmaking, creating or growing an endowment, etc.)

B.5 - Program Participants Eligibility

B.5.1 - Eligible Participants

READY Appalachia: Community Foundations Training Program eligible participants include community foundation executive directors (or equivalent), managers, and their staffs and board members. The primary target of this program are community foundations serving historically marginalized and/or low-income populations, [distressed areas](#), [Interagency Working Group on Coal and Power Plant Communities-designated communities](#), lower-capacity community foundations, those in remote areas of the Region, and those whom ARC has not worked with before.

The training program has space for two participants from up to 30 community foundations, or 60 total participants. The first participant must be the executive director or equivalent of the community foundation, and the second participant is left to the discretion of the community foundation depending on their goals in participating in the program. For example, the second participant could be a fellow staff member (e.g., development director, operations manager, program

director, finance director, HR director, etc.), a board member, active community member/donor, or other individual. This method allows for flexibility when it comes to the priorities or focus areas of the community foundation, while also ensuring permeation of the effects of the training through the whole foundation and sustainability of the effects over time. The consistent and active participation of two individuals from each community foundation as described above is a requirement of the program and will impact the community foundations' eligibility for the financial assistance program.

B.5.2 - Ineligible Participants

Staff, elected officials, executives, board members, or individuals in similar roles in a non-profit organization or other entity that is not a community foundation will not be eligible to participate in the program. In accordance with the ARC Code, Section 8.1E, no ARC grant may be made directly to a for-profit entity. They are therefore disqualified from participation in the training program.

B.5.3 - Program Participation - Reservation of Rights

ARC envisions the program to provide space for two participants from each community foundation. See Section B.5.1 for details.

Program participants shall commit to actively participating in the training sessions. Both participants must be actively engaged in all the program activities. Eligibility to apply for the financial assistance program will depend partially on both participants' effort and attendance in the program activities. ARC reserves the right to expand, modify, adjust, or deny participation in the program, at its sole discretion, when it advances the policy goals, priorities, and best use of ARC resources.

Section C. Scope of Work*

Program Components

*All deliverables will be subject to the review and approval of ARC.

Task 1. Recruitment of 30 Community Foundations to Participate in the READY Appalachia: Community Foundations Training Program.

1.1 The contractor will develop a request for applications (RFA) template for the READY Appalachia: Community Foundations Training Program. The contractor will include in this package all applicable guidance, templates, and forms to standardize the collection of information of program applicants.

1.2 The contractor will design the RFA scoring rubric for ARC approval.

1.3 The contractor will design an outreach/marketing plan for the program.

1.4 The contractor will identify underserved community foundations, including those serving historically marginalized and/or low-income populations, [distressed areas](#), [Interagency Working Group on Coal and Power Plant Communities-designated communities](#), lower-capacity community foundations, those in remote areas of the Region, and those whom ARC has not worked with before, all in order to prioritize outreach to these entities to the satisfaction of ARC.

1.5 Upon ARC approval of the outreach plan, the contractor will coordinate the outreach activities with ARC's Communications Department and will actively engage in outreach in the Appalachian Region to recruit program participants.

1.6 The contractor will assist interested parties during the application process and will manage the back end of the application process (i.e., receiving and saving the applications at the contractor's repository with satisfactory safeguards to preserve the integrity and completeness of the data collected).

1.7 The contractor will collect program applications and pre-screen applications for sufficiency, sending a list to ARC for review and approval. The contractor will also send a list of the disqualified applications with an explanation for the disqualification.

1.8 The contractor will support ARC in the selection of program participants by coordinating the internal review and scoring process. The selection of program participants will be at the sole discretion of ARC. ARC reserves the right to select fewer than 30 organizations if the applications do not meet minimum scoring criteria.

1.9 The contractor will support ARC in all program communications to program participants (both selected and not selected) during the entire application process, for the duration of the training program, and during the evaluation of the program, at the direction of the ARC READY Program Analyst. Contractor will manage all communication with course participants and instructors related to the courses and consultation sessions.

Task 2. Design and Implementation of a Virtual Cohort Training Program

Note: In the tasks below, the words “will” or “must” are used when these are required by ARC. The words “can” or “may” are used when ARC suggests a certain method. However, ARC is open to alternative proposals from contractors according to their expertise and understanding of the intended audience. Contractors must provide justification in their proposals for deviating from both the required and suggested methods.

2.1 The contractor will design a large-scale virtual training program to serve up to 30 community foundations (60 participants; two from each entity). The contractor will be responsible for developing the course curriculum for 3–5 courses in total covering the topics identified in Section D, Training Requirements. The training must have the following elements:

- a. The 30 community foundations will be organized into small groups (“cohorts”) to take each course with not more than 5 community foundations per cohort, with 3–4 community foundations being ideal.
- b. The course must include small group class time, regular (e.g., biweekly) one-on-one consultations between the instructor and the community foundation, actionable homework, assignments/readings, and a one-on-one follow-up consultation (with a written report for each entity) several months after the course finishes. The follow-up meeting between the instructor and each community foundation that was just mentioned will focus on potential uses for the future financial assistance opportunity as well as any trouble or successes in applying the concepts from the course. ARC estimates that the minimum number of direct technical assistance hours based on this model (class time and one-on-ones) is 800 hours, but contractors should make their own calculations. This figure does not include administration, course development, or other types of activities.
- c. Cohorts may be organized primarily based on course selection (this assumes community foundations will take one course instead of several, but ARC is leaving this decision up to the contractor) followed by any other reasonable criteria the contractor may find appropriate to meet program goals. For example, eight organizations request the Branding for Community Foundations course. After accounting for this course choice, the contractor could sort the foundations into three different cohorts of the Branding for Community Foundations course according to community foundation size, capacity level, location, focus area of the foundation at the time/their reason for taking the course, any other criterion, or a combination of these deemed most appropriate by the program administrator.
- d. The courses and technical assistance sessions must be entirely virtual and must be offered synchronously (i.e., there will be no self-paced elements of the courses or technical assistance sessions). The instruction and coaching must take place over Zoom or another video-conferencing platform and should encourage direct interaction among the cohort and between the community foundations and instructors.
- e. **Most importantly**, the course materials and homework assignments must be actionable, tool-based, and grounded in real-life situations faced by community foundations, rather than based in theory. It is expected that the courses will be

designed in an interactive format that allows participants to use the tools and materials in their work following the course.

f. The course in its entirety should be no less than six and no more than 12 weeks long, although alternatives to this structure may be considered.

2.2 The virtual training will address skills related to successful management of a community foundation and its programming. **Full details about the skills required to be covered can be found in Section D, Training Requirements.**

2.3 The contractor will deliver the training sessions to program participants and will report to ARC the outcome of the training sessions. For each session, the contractor must report to ARC during the weekly meetings on attendance in both the courses and one-on-ones, homework completion, general themes, and any problems. Class attendance must be recorded and reported weekly to ARC throughout the training program.

2.4 The contractor will engage and manage course instructors, develop and oversee delivery of course content, develop and manage homework assignments, and determine and secure course materials and references for program participants to use. The contractor may use an online learning management system to accomplish this, but that is not required.

2.5 The contractor will coordinate regular (e.g., biweekly) one-on-one consultations between program participants and instructors to enhance the learning experience and achieve program goals. For example, the instructor could discuss the individual foundation's homework assignment or situation. The contractor will draft any materials related to individual consultation sessions during and after the course.

2.6 The contractor will provide each organization with an optional follow-up consultation to take place about three months following completion of the course, and will provide ARC and the participating foundation with a written summary of the follow-up consultation. The optional consultation should focus on a project concept for the future READY Appalachia: Community Foundations Training Program funding opportunity, as well as any trouble or success in applying the concepts from the course.

2.7 The contractor will have regular communication with ARC staff, including weekly meetings from the beginning of the period of performance through the end of July 2024 and biweekly meetings thereafter as required by ARC.

2.8 The contractor will provide written monthly progress reports that will include, at a minimum, the status of the courses, course attendance, issues impacting the training sessions, the status of the direct technical assistance (consultations) and any issues associated with it. These reports will occur when the contractor is requesting payment. These reports are in addition to the weekly status meetings.

2.9 The contractor will provide to ARC the recording of the training sessions, as well as any resources or documents used as a part of the trainings. The contractor will be responsible for notifying the participants that the sessions will be recorded and provided to ARC for its use and dissemination. As such, the contractor will document the consent from all participants recorded (getting participant's consent to use their image, voice, likeness, and contributions during the sessions) and will share it with ARC upon request. The contractor will grant ARC indefinite

and irrevocable right to use, edit, and disseminate the recorded material and documents utilized as a part of the course as it sees fit without any additional consent or approval by contractor or the participants.

Task 3. Program Evaluation

3.1 The contractor will evaluate the effectiveness of the READY Appalachia: Community Foundations Training Program as a means of developing community foundation capacity by conducting a program evaluation (details below).

3.2 The contractor must submit a program evaluation strategy for ARC approval. Upon ARC approval and in coordination with ARC’s Research and Evaluation staff, the contractor will implement this program evaluation strategy.

3.3 The contractor will conduct two surveys. The first survey will be the course evaluation and will be carried out immediately following the end of the courses. The second survey will be a program evaluation survey and will be carried out several months following the course to determine any longer-term impact of the course.

3.4 The contractor will produce a program evaluation report that will include the results from the surveys and other data acceptable to ARC collected during the implementation of the program. The full evaluation should be based on the metrics already utilized by ARC in its [Performance Measurement Guidance](#), but at a minimum, the following ARC performance measures: “organizations served” and “organizations improved,” which in this case refers respectively to the community foundations being provided training through this initiative and those seeing measurable improvement as a result.

3.5 The contractor will produce a set of recommended metrics for ARC to use when conducting future evaluations of community foundation capacity development over a longer period.

3.6 The contractor will present (virtually) the results of the full evaluation and program takeaways to ARC.

Program Key Dates*

*Subject to change.

Open request for applications (RFA)	February 1, 2024
Close RFA	March 15, 2024
Select/notify applicants	April 12, 2024
Training program	April 29–July 26 2024
Course evaluation survey	August 1, 2024
Follow-up consultations	September–October 2024
Program evaluation survey	October 2024
Program evaluation due to ARC	January 6, 2025
Virtual presentation of findings to ARC	Early February 2025
Contract close	April 2025

Section D. Training Requirements

ARC requires the contractor for the READY Appalachia: Community Foundations Training Program to develop a course curriculum for 3–5 courses that cover the following skills.

***Note:** The courses should assume little or no prior knowledge of community foundation operations or management and may need to be adapted according to the needs and size of the selected participating organizations.

D.1 Basic Skills – Community Foundation Management and Programming

- Fundraising strategies, which may include growing an endowment, cultivating planned giving, developing innovative project platforms, recruiting members or recurring donors, executing annual campaigns, soliciting major gifts, etc.
- Foundation-specific financial management systems
- Board development and leveraging members' connections to attract additional funds and expertise to the community foundation's work
- Human resources (e.g., hiring the right development director, accountants, etc.)
- Grantmaking:
 - Structuring and launching a program
 - Managing the program (application scoring, project assessments, backend accounting, report review, compliance)
- Branding, storytelling, and communications strategies for community foundations
- Investing for true impact/data-driven impact measurement
- Developing a scholarship program
- The affiliate model for community foundations
- Programs/offerings to nonprofit constituents
- Any other basic skills related to community foundation programs and operation fundamentals that the contractor deems appropriate

Section E. Schedule of Deliverables*

*Dates are subject to change. Some deliverables from Section C are left out due to their taking place throughout the contract period or the lack of a specific date of completion. Contractors are responsible for all deliverables listed in Section C.

Task/Deliverable	Date of completion/submission
1.1 Develop RFA template and materials	January 5, 2024
1.2 Develop draft RFA scoring rubric	January 5, 2024
1.3 Outreach/marketing plan	January 19, 2024
1.4 Identify priority foundations	January 19, 2024
1.5 Outreach to priority community foundations and general public	February 1, 2024–March 15, 2024
1.6 Assist community foundations during the application process; manage the back end of the application process (i.e., saving all the applications)	February 1, 2024–March 15, 2024
1.7 Send ARC pre-screened list of qualified foundations/disqualified foundations with justification	March 22, 2024
1.8 Coordinate the application review process (i.e., managing the review panel)	March–April 2024
1.9 Assist ARC with communications with applicants and participants throughout the program	As frequent as necessary to timely and effectively deliver the program and satisfy ARC needs. Duration: Throughout the program
2.1 Design and execute the full virtual training program	The design plan is due to ARC by March 1, 2023. Execution of the training program: April 29–July 26
2.3 Report to ARC on the results of the courses and technical assistance sessions, including the follow-up consultation focused on the financial assistance opportunity	During the training period, in the weekly status update meeting, a report should be provided on the courses and technical assistance sessions taking place the week before. By two business weeks after each follow-up consultation, the contractor should send a summary and recommendations both to the participant and ARC.

2.5 Coordinate one-on-one technical assistance sessions during and following the course	The one-on-ones can take place in the off-week following each class, and the follow-up sessions can take place 3–4 months following class completion.
2.6 Weekly check-in meetings with ARC until Sept. 2023, with biweekly check-in meetings thereafter	Weekly/biweekly throughout the project period
2.9 Contractor will provide recordings of all sessions and resources to ARC.	At the end of the training period.
3.2 Submit program evaluation strategy for ARC review	May 31, 2024
3.3 Deploy a course evaluation survey and program evaluation survey	The course evaluation survey should be taken immediately following course. The program evaluation survey should be taken about six months post-course.
3.4 Submit full evaluation report	January 6, 2025
3.5 Along with evaluation, provide a set of capacity-building metrics for ARC's future use	January 6, 2025
3.6 Present evaluation at ARC headquarters	Early February 2025

Section F. Proposal Requirements and Evaluation

Proposal Format

The proposal narrative cannot exceed forty (40) pages, including the course offerings, sample course curriculum, work plan, sample assignment/resource, and staffing plan. Please clearly label all application attachments. Responses to the solicitation (i.e., proposals) must be submitted as one (1) PDF document to ARC's READY Program Analyst at ready@arc.gov by **5:00pm EST on October 6, 2023**.

In general, ARC records are made available for public inspection. The offeror shall identify and mark any and all documents containing trade secrets and proprietary, sensitive commercial, and financial information that is confidential in nature and for which there is a commercial interest.

The proposal narrative should provide specific details on the following information, utilizing the same headings:

Section 1: Program Strategy

The proposal must describe in detail the offeror's strategy for the implementation of the READY Appalachia: Community Foundations Training Program, including the following:

- The number of courses to meet the requirements set forth in Section D.
- Proposed method(s) for organizing the cohorts/cohort structure, including criteria other than choice of course that will be considered (for example, size of community foundation, location, area of focus now, etc.). Please provide justification for these additional criteria.
- General course structure and sub-topics.
- Proposed methods for selecting and managing any subcontractors.
- Methods for identifying and reaching different types of underserved community foundations (including community foundations serving marginalized populations or lower-income populations, foundations serving remote communities, Interagency Working Group on [Coal and Power Plant Communities](#))-specified areas, [distressed areas](#), and lower-capacity community foundations
- Proposed methods for evaluating the program, including sample survey questions and how conclusions will be drawn.
- Proposed methods for post-course follow-up consultations, including preparing community foundations for the financial assistance program.
- As an attachment, please outline one of the courses you may provide and attach one sample assignment/resource for that course.
- As an attachment, please prepare and submit a work plan addressing the scope of work set forth in Section C, including briefings, key deliverables (including preliminary drafts for review), and program evaluation against a specific timeline. Please include specific dates (instead of only the month and year) for all activities to be completed in 2024.

Section 2: Experience and Expertise

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 the development of trainings; working with philanthropic organizations, preferably community foundations; and providing direct technical assistance.
- Description(s) of the qualifications and credentials of the personnel performing the work (or a list of qualifications/job descriptions if not yet hired), including professional classifications (e.g., project director, meeting facilitator, instructor, etc.). The proposal must identify the relationship of key project personnel to the applicant (examples staff, consultants, and subcontractors). Brief resumes of the education and professional experience of key personnel are required to be added as attachments. Resumes shall not include address, phone, or personal identifiable information. Any change in key personnel is subject to approval by ARC.
- As an attachment, add 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 offeror (or subcontractor if applicable) and list of 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.

Section 3: Budget/Funding

Proposals must include a detailed budget narrative. The budget narrative details an estimate for all work in the proposal, as well as hourly and daily rates of all relevant staff members/contractors and any information-technology-related expenses. The contractor is fully responsible for all associated logistics and costs for implementing the training and assembling the roster of instructors. The budget narrative must be presented in a table and itemized costs organized by each key component of the program: 1) overall administration and 2) virtual cohort training. Within each component, expenses should be organized by personnel, fringe benefits, travel, equipment, supplies, contractual, and other. The budget narrative must reflect the following:

1. The activity and expense;
2. How the cost was calculated; and
3. Total cost for that item.

Sample Budget Narrative

Item	Program Component	Description	Cost
Personnel			
Project Director	Overall administration	Oversee all aspects of the contract at 50% FTE (xxxx) or x hours at y/hour	Xxxx
Project Manager	Overall administration	Assist PD with administrative aspects, organizing assistance and communications 50% FTE (xxx) or x hours at y/hour	Xxxx
Contractual			
Instructors	Virtual cohort training	Teach two cohorts of x class and provide assistance, x hours at y/hour	Xxxx
IT Administrator	Virtual cohort training	Provide IT services to the learning platform, x hours at y/hour	Xxxx
Supplies			
Software	Virtual cohort training	Software X at annual subscription fee x/year for y years	Xxxx

Required Documents

1. Proposal narrative and applicable attachments.
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.

Submission Process

Proposals are due on or before 5 p.m. on October 6, 2023. Please send proposals as one PDF document to Bettina Jones, READY Program Analyst, at ready@arc.gov. Questions regarding this RFP should be sent to Bettina Jones, the manager of the READY program, at ready@arc.gov no later than 5 p.m. on September 30, 2023.

Additional requirements for submission:

- Telephone or mail responses will not be accepted for this RFP.
- Submissions MUST be sent via email.
- Responses or unsolicited attachments will not be accepted after the closing date.

- Requests for time extensions past any deadlines will not be considered.
- Incomplete proposals will not be considered.

It is anticipated that the contractor will be selected by November 17, 2023, for an estimated contract start date of December 1, 2023, and an estimated completion date of April 2025. ARC reserves the right to modify the schedule of this procurement, including but not limited to, the execution of the contract or any other element if it is in the best interest of ARC. ARC also reserves the right to partially award the work associated with this RFP or even to cancel this solicitation at its sole discretion.

Proposal Evaluation

ARC will select a contractor through a competitive process based on the following criteria, in no particular order:

- Effectiveness of the proposed approach to deliver the cohort training program.
- Strength and thoroughness of the list of instructors and other subcontractors.
- Strength of the design of the curriculum, request for applications, suggested assignments, and post-course follow-up.
- A credible management proposal for staffing, detailed workplan, and the organizational capacity to execute the program on an aggressive timeline.
- Relevant experience with managing similar technical assistance or financial assistance programs.
- Relevant experience in the Appalachian Region, particularly assisting community foundations in technical assistance and/or training.
- Suggested approach to identifying and targeting participants for the program.
- Approach to evaluation of the program's two main aspects (the courses themselves and the organization's development).
- Cost effectiveness of the proposal.

Section 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.

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.

2. **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.

3. **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.

4. **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).

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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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.

(2) 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;

(3) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(4) Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this clause;

(5) 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

(6) 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.

2. 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.

3. 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.

11. 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.

12. 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).

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.

13. 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.

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 contains 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.

14. **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. **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.

15. **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.

ARCs 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.

16. 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.

17. 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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”

(a) 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:

(b) This notice shall be marked on any reproduction of these data, in whole or in part.

(h) 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.

(i) 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.

18. **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.