

September 3, 2019

Request for Proposals # AUHC-2019-032  
Project Legal Services

Dear Sir or Madam,

Chemonics International Inc. (hereinafter referred to as “Chemonics”), under the Advancing Universal Health Coverage (AUHC) project, USAID Contract No. AID-388-C-17-00001, is issuing a Request for Proposals (RFP) from legal firms in Bangladesh to provide legal services to Chemonics on an as-needed basis. Required legal services are expected to be in the areas of liaison office registration, human resource and labor law/regulation, project office policy manual review, tax law, and any other areas in which Chemonics may need a legal opinion pertaining to its operations within Bangladesh.

AUHC is a USAID-funded project implemented by Chemonics in Bangladesh. The goal of AUHC is to significantly expand access to safe, affordable, and quality health services, while increasing financial protection, particularly of the poor, in support of the Government of Bangladesh’s National Health Care Financing Strategy (2012-2032), under which Universal Health Coverage is a key priority. The main focus of the AUHC project in pursuit of this goal is ensuring the sustainability of the Surjer Hashi Network (SHN) of clinics.

Companies or organizations should indicate their interest in submitting a proposal for the anticipated agreement by sending an email indicating their intention to Procurement Specialist Md. Ashraful Islam at [procurement@auhproject.org](mailto:procurement@auhproject.org) by 5:30pm on Sunday, September 8, 2019.

Chemonics realizes that Offerors may have additional questions after reading this RFP. Interested Offerors can submit their questions to Mr. Islam according to the instructions in 1.8 of the RFP. If necessary, Chemonics will provide answers to all relevant questions received in an amendment that will be e-mailed directly to all interested Offerors who registered their interest as noted above.

This RFP does not obligate Chemonics to execute an agreement nor does it commit Chemonics to pay any costs incurred in the preparation and submission of the proposals. Furthermore, Chemonics reserves the right to reject any and all offers, if such action is considered to be in the best interest of Chemonics.

Sincerely,

Joseph P. Urban  
Deputy Chief of Party, Operations and Finance  
AUHC Project

Request for Proposals

RFP # AUHC-2019-032

For the provision of

Legal Services

Contracting Entity:

Chemonics International Inc.'s Liaison Office in Bangladesh  
CWN (A) 3A Road 49, Kemal Ataturk Avenue,  
Gulshan-2, Dhaka-1212

Funded by:

United States Agency for International Development (USAID)

Funded under:

Advancing Universal Health Coverage (AUHC) Activity

Prime Contract Number AID-388-C-17-00001

**\*\*\*\*\* ETHICAL AND BUSINESS CONDUCT REQUIREMENTS \*\*\*\*\***

Chemonics is committed to integrity in procurement, and only selects suppliers based on objective business criteria such as price and technical merit. Chemonics expects suppliers to comply with our Standards of Business Conduct, available at <https://www.chemonics.com/our-approach/standards-business-conduct/>.

Chemonics does not tolerate fraud, collusion among offerors, falsified proposals/bids, bribery, or kickbacks. Any firm or individual violating these standards will be disqualified from this procurement, barred from future procurement opportunities, and may be reported to both USAID and the Office of the Inspector General.

Employees and agents of Chemonics are strictly prohibited from asking for or accepting any money, fee, commission, credit, gift, gratuity, object of value or compensation from current or potential vendors or suppliers in exchange for or as a reward for business. Employees and agents engaging in this conduct are subject to termination and will be reported to USAID and the Office of the Inspector General. In addition, Chemonics will inform USAID and the Office of the Inspector General of any supplier offers of money, fee, commission, credit, gift, gratuity, object of value or compensation to obtain business.

Offerors responding to this RFP must include the following as part of the proposal submission:

- Disclose any close, familial, or financial relationships with Chemonics or project staff. For example, if an offeror's cousin is employed by the project, the offeror must state this.
- Disclose any family or financial relationship with other offerors submitting proposals. For example, if the offeror's father owns a company that is submitting another proposal, the offeror must state this.
- Certify that the prices in the offer have been arrived at independently, without any consultation, communication, or agreement with any other offeror or competitor for the purpose of restricting competition.
- Certify that all information in the proposal and all supporting documentation are authentic and accurate.
- Certify understanding and agreement to Chemonics' prohibitions against fraud, bribery and kickbacks.

Please contact Chief of Party James L. Griffin at [jgriffin@auhproject.org](mailto:jgriffin@auhproject.org) with any questions or concerns regarding the above information or to report any potential violations. Potential violations may also be reported directly to Chemonics at [BusinessConduct@chemonics.com](mailto:BusinessConduct@chemonics.com) or by phone/Skype at +1.888.955.6881.

## **RFP Table of Contents**

### List of Acronyms

#### Section I Instructions to Offerors

- I.1 Introduction
- I.2 Offer Deadline
- I.3 Submission of Offers
- I.4 Requirements
- I.5 Source of Funding and Geographic Code
- I.6 Chronological List of Proposal Events
- I.7 Validity Period
- I.8 Evaluation and Basis for Award
- I.9 Negotiations
- I.10 Terms of Agreement
- I.11 Privity

#### Section II Background, Scope of Work, Deliverables, and Deliverables Schedule

- II.1. Background
- II.2. Scope of Work
- II.3. Deliverables

#### Section III Firm Fixed Price Agreement (Terms and Clauses)

- Annex 1 Sample Proposal Cover Letter
- Annex 2 Required Certifications

### List of Acronyms

CEO	Chief Executive Officer
CFR	Code of Federal Regulations
CO	USAID Contracting Officer
COP	Chief of Party
COR	USAID Contracting Officer's Representative
CV	Curriculum Vitae
FAR	Federal Acquisition Regulations
M&E	Monitoring and Evaluation
NICRA	Negotiated Indirect Cost Rate Agreement
NGO	Nongovernmental organization
RFP	Request for Proposals
SAF	Strategic Activities Fund
SHN	Surjer Hashi Network
U.S.	United States
USAID	U.S. Agency for International Development
USAID/Bangladesh	USAID Mission in Bangladesh
USG	U.S. Government
VAT	Value Added Tax

## **Section I. Instructions to Offerors**

### **I.1. Introduction**

Chemonics International Inc. (hereinafter referred to as “Chemonics”), under the Advancing Universal Health Coverage (AUHC) project, USAID Contract No. AID-388-C-17-00001, is issuing a Request for Proposals (RFP) from legal firms in Bangladesh to provide legal services to Chemonics on an as-needed basis. Required legal services are expected to be in the areas of liaison office registration, human resource and labor law/regulation, project office policy manual review, tax law, and any other areas in which Chemonics may need a legal opinion pertaining to its operations within Bangladesh.

AUHC is a USAID-funded project implemented by Chemonics in Bangladesh. The goal of AUHC is to significantly expand access to safe, affordable, and quality health services, while increasing financial protection, particularly of the poor, in support of the Government of Bangladesh’s National Health Care Financing Strategy (2012-2032), under which Universal Health Coverage is a key priority. The main focus of the AUHC project in pursuit of this goal is ensuring the sustainability of the Surjer Hashi Network (SHN) of clinics.

Chemonics will issue an award to one or more firms. The award(s) will be in the form of the awardees’ standard services agreement (hereinafter referred to as “the agreement”). The successful Offerors shall be required to adhere to the statement of work and terms and conditions noted Section III herein, which will be incorporated into any agreement by reference.

Offerors are invited to submit proposals in response to this RFP in accordance with **Section I Instructions to Offerors**, which will not be part of the agreement. The instructions are intended to assist interested Offerors in the preparation of their offer. Any resulting agreement will be guided by Sections II and III.

This RFP does not obligate Chemonics to execute an agreement nor does it commit Chemonics to pay any costs incurred in the preparation and submission of the proposals. Furthermore, Chemonics reserves the right to reject any and all offers, if such action is considered to be in the best interest of Chemonics.

Unless otherwise stated, the periods named in the RFP shall be consecutive calendar days.

### **I.2. Offer Deadline**

Offerors shall submit their offers electronically. E-mailed offers must be received no later than 11:59pm on Saturday, September 14, 2019, at the following address:

Md. Ashraful Islam  
Procurement Specialist  
[procurement@auhproject.org](mailto:procurement@auhproject.org)

Faxed offers will not be considered.

Offerors are responsible for ensuring that their offers are received in accordance with the instructions stated herein. Late offers may be considered at the discretion of Chemonics. Chemonics cannot guarantee that late offers will be considered.

### **I.3. Submission of Offers**

Proposals must be submitted via e-mail only.

#### **A. Instructions for the Submission of Electronic Copies**

Separate technical and cost proposals must be submitted by e-mail no later than the time and date specified in I.2. The proposals must be submitted to the point of contact designated in I.2.

The Offeror must submit the proposal electronically with up to 3 attachments (5 MB limit) per email compatible with MS Word, MS Excel, readable format, or Adobe Portable Document (PDF) format in a Microsoft XP environment. Offerors must not submit zipped files. Those pages requiring original manual signatures should be scanned and sent in PDF format as an email attachment.

The technical proposal and cost proposal must be kept separate from each other. Technical proposals must not make reference to pricing data in order that the technical evaluation may be made strictly on the basis of technical merit.

#### **I.4. Requirements**

To be determined responsive, an offer must include all of documents and sections included in I.4.A and I.4.B.

##### **A. General Requirements**

Chemonics anticipates issuing an agreement to a Bangladeshi legal firm, provided it is legally registered and recognized under the laws of Bangladesh and is in compliance with all applicable civil, fiscal, and other applicable regulations. Such a company or organization could include a private firm or a non-profit.

Companies and organizations that submit proposals in response to this RFP must meet the following requirements:

- (i) Companies or organizations, whether for-profit or non-profit, must be legally registered under the laws of Bangladesh upon award of the agreement.
- (ii) Firms operated as commercial companies or other organizations or enterprises (including nonprofit organizations) in which foreign governments or their agents or agencies have a controlling interest are not eligible as suppliers of commodities and services.
- (iii) Companies or organizations must have a local presence in Bangladesh at the time the agreement is signed.
- (iv) Companies or organizations, whether for-profit or non-profit, shall be requested to provide a DUNS number if selected to receive a subaward valued at USD\$30,000 or more, unless exempted in accordance with information certified in the Evidence of Responsibility form included in the required certifications in Annex 3.<sup>1</sup>

Offerors may present their proposals as a member of a partnership with other companies or organizations. In such cases, the agreement will be awarded to the lead company in the partnership. The leading company shall be responsible for compliance with all agreement terms and conditions and making all partnership arrangements, including but not limited to division of labor, invoicing, etc., with the other company(ies). A legally registered partnership is not necessary for these purposes; however the different organizations must be committed to work together in the fulfillment of the agreement terms.

---

<sup>1</sup> If Offeror does not have a DUNS number and is unable to obtain one before proposal submission deadline, Offeror shall include a statement in their Evidence of Responsibility Statement noting their intention to register for a DUNS number should it be selected as the successful offeror or explaining why registration for a DUNS number is not possible. Contact Dun & Bradstreet through this webform to obtain a number: <https://fedgov.dnb.com/webform> Further guidance on obtaining a DUNS number is available from Chemonics upon request.

## **B. Required Proposal Documents**

### 1. Cover Letter

The offeror's cover letter shall include the following information:

- i. Name of the company or organization
- ii. Type of company or organization
- iii. Address
- iv. Telephone
- v. Fax
- vi. E-mail
- vii. Full names of members of the Board of Directors and Legal Representative (as appropriate)
- viii. Taxpayer Identification Number
- ix. DUNS Number
- x. Official bank account information
- xi. Other required documents that shall be included as attachments to the cover letter:
  - a) Copy of registration or incorporation in the public registry, or equivalent document from the government office where the offeror is registered.
  - b) Copy of company tax registration, or equivalent document.
  - c) Copy of trade license, or equivalent document.
  - d) Evidence of Responsibility Statement, whereby the offeror certifies that it has sufficient financial, technical, and managerial resources to complete the activity described in the scope of work, or the ability to obtain such resources. This statement is required by the Federal Acquisition Regulations in 9.104-1. A template is provided in Annex 3 "Required Certifications".
  - e) Applicable documents listed in I.4.A.

A sample cover letter is provided in Annex 1 of this RFP.

### 2. Technical Proposal

The technical proposal shall comprise the following parts:

- Part 1: Technical Approach and Methodology. This part shall be between 3 and 7 pages long, but may not exceed 7 pages.

In Part 1, offerors must describe their technical approach and methodology for receiving, tracking, and executing work orders from Chemonics when solicited for legal assistance in any of the following areas:

- liaison office registration
- human resource and labor law/regulation
- project office policy manual review
- tax law
- any other areas in which Chemonics may need a legal opinion pertaining to its operations within Bangladesh

In addition, offerors must describe their firm's professional profile in enough detail so as to enable Chemonics' technical evaluation committee to determine whether an offeror has the professional capability to competently provide the services in question.

- Part 2: Management and Personnel. This part shall be between 2 and 5 pages long, but may not exceed 5 pages. CVs for all partners and associates who may be utilized to provide services under any eventual award must be provided. CVs will not count toward the page limit.

In this section, offerors must describe the professional qualifications and experience of the legal and administrative staff who will provide services under any eventual award, with emphasis on experience rendering services to organizations similar to Chemonics. Staff assigned to provide opinions and guidance must have obtained, at minimum, an LL.B. from an accredited and recognized institution either in Bangladesh or abroad, obtained a Bangladesh law (bar) license, and be eligible to provide legal opinions in Bangladesh.

Additionally, offerors must provide a position description, complete with years of experience, for each position proposed.

- Part 3: Corporate Capabilities, Experience, and Past Performance. This part shall be between 2 and 7 pages long, but may not exceed 7 pages.

Part 3 must include a description of the company and organization, with appropriate reference to any parent company and subsidiaries. Offerors must include details demonstrating their experience and technical ability in implementing the technical approach/methodology and the detailed work plan. Additionally, offerors must include three past performance references of similar work (under contracts or agreements) previously implemented as well as contact information for the companies for which such work was completed. Contact information must include at a minimum: name of point of contact who can speak to the offeror's performance, name and address of the company for which the work was performed, and email and phone number of the point of contact.

Chemonics reserves the right to check additional references not provided by an offeror.

The sections of the technical proposal stated above must respond to the detailed information set out in Section II of this RFP, which provides the background, states the scope of work, describes the deliverables, and provides a deliverables schedule.

### 3. Cost Proposal

The cost proposal is used to determine which proposals represent the best value and serves as a basis of negotiation before award of an agreement.

The price of the agreement shall not exceed ₳2,000,000. Costs shall be based on the Offeror's proposed positions and the commercial rate per hour of time for each. If the offeror proposes any travel or travel-related costs such as airfare, communications, lodging, and meal and incidental expenses, they must be in line with the offeror's own internal travel policies, which must be included with the cost proposal. No travel may be undertaken under any resulting agreement without express written authorization by Chemonics. No other costs besides the above will be considered. All cost information must be expressed in Bangladeshi taka.

In accordance with the agreement under which this procurement is financed, Chemonics is exempt from payment of taxes, VAT, tariffs, duties, or other levies imposed by the Bangladesh government. Offerors must include taxes, VAT, charges, tariffs, duties and levies in accordance with the laws of the Bangladesh as a separate cost line. Chemonics will provide the successful offeror with a VAT coupon for VAT amount, VAT coupon will be issue upon submission of a Mushok-11.

Offerors must provide evidence of their proposed commercial rates. For instance, an internal financial memorandum approved by the firm's partners or redacted retainer agreements or billing statements of recent or current clients. Supporting information must be provided in sufficient detail to allow for a



complete analysis of each cost element or line item. Chemonics reserves the right to request additional cost information if the evaluation committee has concerns of the reasonableness, realism, or completeness of an offeror's proposed cost.

Indirect rates may not be proposed as a part of offeror's budget.

Under no circumstances may cost information be included in the technical proposal. No cost information or any prices, whether for deliverables or line items, may be included in the technical proposal. Cost information must only be shown in the cost proposal.

#### **I.5. Source of Funding, Authorized Geographic Code, and Source and Origin**

Any agreement resulting from this RFP will be financed by USAID funding and will be subject to U.S. Government and USAID regulations.

All goods and services offered in response to this RFP or supplied under any resulting award must meet USAID Geographic Code 937 in accordance with the United States Code of Federal Regulations (CFR), 22 CFR §228, available at: <http://www.gpo.gov/fdsys/pkg/CFR-2012-title22-vol1/pdf/CFR-2012-title22-vol1-part228.pdf>.

The cooperating country for this RFP is Bangladesh.

Offerors may not offer or supply any products, commodities or related services that are manufactured or assembled in, shipped from, transported through, or otherwise involving any of the following countries: Cuba, Iran, North Korea, Syria. Related services include incidental services pertaining to any/all aspects of this work to be performed under a resulting contract (including transportation, fuel, lodging, meals, and communications expenses).

#### **I.6. Chronological List of Proposal Events**

The following calendar summarizes important dates in the solicitation process. Offerors must strictly follow these deadlines.

RFP published	03/09/19
Deadline for written questions	08/09/19
Answers provided to questions/clarifications	10/09/19
Proposal due date	14/09/19
Agreement award (estimated)	17/10/19

The dates above may be modified at the sole discretion of Chemonics. Any changes will be published in an amendment to this RFP.

**Written Questions and Clarifications.** All questions or clarifications regarding this RFP must be in writing and submitted to [procurement@auhproject.org](mailto:procurement@auhproject.org) no later than 5:30pm on September 8, 2019. Questions and requests for clarification, and the responses thereto, will be circulated to all RFP recipients who have indicated an interest in this RFP.

Only written answers from Chemonics will be considered official and carry weight in the RFP process and subsequent evaluation. Any answers received outside the official channel, whether received verbally or in writing, from employees or representatives of Chemonics International, the AUHC project, or any other party, will not be considered official responses regarding this RFP.

**Proposal Submission Date.** All proposals must be received by 11:59pm on September 14, 2019. Late offers will be considered at the discretion of Chemonics.

**Agreement Award (estimated).** Chemonics will select the proposal that offers the best value based upon the evaluation criteria stated in this RFP.

**I.7. Validity Period**

Offerors’ proposals must remain valid for 60 calendar days after the proposal deadline.

**I.8. Evaluation and Basis for Award**

An award will be made to the offeror whose proposal is determined to be responsive to this solicitation document, meets the eligibility criteria stated in this RFP, meets the technical, management/personnel, and corporate capability requirements, and is determined to represent the best value to Chemonics. Best value will be decided using the tradeoff process.

Each proposal will be evaluated and scored against the evaluation criteria and evaluation sub-criteria, which are stated in the table below. Cost proposals are not assigned points, but for overall evaluation purposes of this RFP, technical evaluation factors other than cost, when combined, are considered significantly more important cost factors. If technical scores are determined to be equal or nearly equal, cost will become the determining factor.

In evaluating proposals, Chemonics will use the following evaluation criteria and sub-criteria:

<b>Evaluation Criteria</b>	<b>Evaluation Sub-criteria</b>	<b>Maximum Points</b>
<b>Technical Approach and Methodology</b>		
	Approach and Methodology – Does the proposed program approach and detailed activities and timeline fulfill the requirements of executing the Scope of Work effectively and efficiently?	20 points
	Sector Knowledge – Does the proposal demonstrate the offeror’s knowledge related to the healthcare sector as described in and required by the SOW?	20 points
<b>Total Points – Technical Approach</b>		40 points
<b>Management and Personnel</b>		
	Personnel Qualifications – Do the proposed team members have necessary experience and capabilities to carry out the Scope of Work?	35 points
<b>Total Points – Management</b>		35 points
<b>Corporate Capabilities, Experience, and Past Performance</b>		
	Company Background and Experience – Does the company have experience relevant to the project Scope of Work?	25 points
<b>Total Points – Corporate Capabilities</b>		25 points
<b>Total Points</b>		100 points

Evaluation points will not be awarded for cost. Cost will primarily be evaluated for realism and reasonableness. If technical scores are determined to be nearly equal, cost will become the determining factor.

This RFP utilizes the tradeoff process set forth in FAR 15.101-1. Chemonics will award an agreement to the offeror whose proposal represents the best value to Chemonics and the AUHC project. Chemonics may award to a higher priced offeror if a determination is made that the higher technical evaluation of that offeror merits the additional cost/price.

#### **I.9. Negotiations**

Best offer proposals are requested. It is anticipated that an agreement will be awarded solely on the basis of the original offers received. However, Chemonics reserves the right to conduct discussions, negotiations and/or request clarifications prior to awarding an agreement. Furthermore, Chemonics reserves the right to conduct a competitive range and to limit the number of offerors in the competitive range to permit an efficient evaluation environment among the most highly-rated proposals. Highest-rated offerors, as determined by the technical evaluation committee, may be asked to submit their best prices or technical responses during a competitive range. At the sole discretion of Chemonics, offerors may be requested to conduct oral presentations. If deemed an opportunity, Chemonics reserves the right to make separate awards per component or to make no award at all.

#### **I.10. Terms of Agreement**

This is a request for proposals only and in no way obligates Chemonics to award an agreement. In the event of agreement negotiations, any resulting agreement will be subject to and governed by the terms and clauses detailed in Section III. Chemonics will use the template shown in section III to finalize the agreement. Terms and clauses are not subject to negotiation. By submitting a proposal, offerors certify that they understand and agree to all of the terms and clauses contained in section III.

#### **I.11. Privity**

By submitting a response to this request for proposals, offerors understand that USAID is NOT a party to this solicitation.

## **Section II Background, Scope of Work, and Deliverables**

### **II.1. Background**

AUHC is a USAID-funded project implemented by Chemonics in Bangladesh. The goal of AUHC is to significantly expand access to safe, affordable, and quality health services, while increasing financial protection, particularly of the poor, in support of the Government of Bangladesh's National Health Care Financing Strategy (2012-2032), under which Universal Health Coverage is a key priority. The main focus of the AUHC project in pursuit of this goal is ensuring the sustainability of the Surjer Hashi Network (SHN) of clinics.

During the implementation of AUHC and in order to remain at all times in compliance with Bangladeshi law, Chemonics will require the services of a reputable law firm to provide legal guidance and opinion on a wide range of topics.

### **II.2. Scope of Work**

Under the anticipated award, the law firm will provide the following services on an as-needed basis:

1. **Legal Opinions:** Providing legal opinions to Chemonics, as and when needed on different legal matters, such as project registration and local labor laws, as may arise from time to time.
2. **Drafting and Vetting:** Drafting and vetting of legal and paralegal documents, contracts, agreements, and instruments, including employment agreement templates, project office policy manuals, allowances summaries, and office leases as and when required.
3. **Meeting, Discussion, Conference:** Attendance at relevant meetings and discussion sessions with Chemonics or various Chemonics-designated consultants and/or third parties, as and when required.
4. **Negotiation:** Dispute Resolution Negotiation with the counterparts of Chemonics/counterparts' lawyers, at the instruction of Chemonics.
5. **Documentation:** Providing necessary legal assistance in preparing all legal documents.
6. **Legal Notice:** Serving and replying to legal notices on behalf of Chemonics.
7. **Licenses, Permits, and Certificates:** Drafting, reviewing, and submitting applications for licenses, permits, and certificates, such as company registration and work permits.
8. **Tax related matters**
9. Any other legal matters as may from time to time arise, excluding those listed below

The following services are not included in the scope of work and would require a separate agreement between the law firm and Chemonics:

1. Cases, litigation, and arbitration before any forum, tribunal, or court.

### **II.3. Deliverables**

Legal services shall be rendered only as requested by Chemonics in writing by the AUHC chief of party or deputy chief of party for operations and finance. With each requested service, the law firm shall provide Chemonics for its approval with a written estimate of the number of billable hours by labor category required to complete that particular request. Chemonics' approval must be secured prior to beginning work. The law firm is not authorized to exceed the estimated number of hours without the prior written approval of Chemonics. The law firm shall then produce the requested written analysis and/or legal opinion under the general direction of the AUHC chief of party or deputy chief of party for operations and finance. Delivery of written analyses and/or legal opinions may be via e-mail or by phone as requested. The AUHC chief of party or deputy chief of party for operations and finance will be responsible for monitoring and accepting all services.

### **Section III Service Agreement Terms and Clauses**

While the service agreement resulting from this procurement will be in the successful offeror's standard format, the following terms and conditions must be incorporated into that agreement. By submitting a proposal in response to this RFP, an offeror agrees to incorporate these terms and conditions and affirms that should any contradiction exist between the offeror's terms and conditions in its standard agreement format and the following terms and conditions, the following terms and conditions will govern.

A. Authorized Geographic Code: Source and Nationality Requirement [AIDAR 752.225-70 (Feb 2012) as altered]

(a) The authorized geographic code for procurement of goods and services under this subcontract is 937.

(b) Except as may be specifically approved by Chemonics, the Subcontractor must procure all commodities (e.g., equipment, materials, vehicles, supplies) and services (including commodity transportation services) in accordance with the requirements at 22 CFR Part 228 —Rules on Procurement of Commodities and Services Financed by USAID Federal Program Funds. Guidance on eligibility of specific goods or services may be obtained from Chemonics.

(c) Ineligible goods and services. The Subcontractor shall not procure any of the following goods or services under this subcontract:

- (1) Military equipment
- (2) Surveillance equipment
- (3) Commodities and services for support of police and other law enforcement activities
- (4) Abortion equipment and services
- (5) Luxury goods and gambling equipment, or
- (6) Weather modification equipment.

(d) Restricted goods. The Subcontractor shall not procure any of the following goods or services without the prior written approval of USAID obtained through Chemonics:

- (1) Agricultural commodities,
- (2) Motor vehicles,
- (3) Pharmaceuticals and contraceptive items
- (4) Pesticides,
- (5) Fertilizer,
- (6) Used equipment, or
- (7) U.S. government-owned excess property.

If Chemonics determines that the Subcontractor has procured any of these specific restricted this subcontract without the prior written authorization of USAID through Chemonics and has received payment for such purposes, Chemonics may require the Subcontractor to refund the entire amount of the purchase.

B. Intellectual Property Rights

(a) Subcontractor warrants that the Work performed or delivered under this Subcontract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Except to the extent that the U.S. Government assumes liability therefor, Subcontractor shall defend, indemnify, and hold harmless Chemonics and its clients from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Subcontract infringes or otherwise violates the intellectual property rights of any person or entity. This

indemnity and hold harmless shall not be considered an allowable cost under any provisions of this Subcontract except with regard to allowable insurance costs.

(b) Subcontractor's obligation to defend, indemnify, and hold harmless Chemonics and its customers under Paragraph (a) above shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to Chemonics' Prime Contract for infringement of a U.S. patent and Chemonics and its clients are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorneys' fees by a third party.

(c) In addition to any other allocation of rights in data and inventions set forth in this agreement, Subcontractor agrees that Chemonics, in the performance of its prime or higher tier contract obligations (including obligations of follow-on contracts or contracts for subsequent phases of the same program), shall have under this agreement an unlimited, irrevocable, paid-up, royalty-free right to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works, and authorize others to do any, some or all of the foregoing, any and all, inventions, discoveries, improvements, mask works and patents as well as any and all data, copyrights, reports, and works of authorship, conceived, developed, generated or delivered in performance of this Contract.

(d) The tangible medium storing all reports, memoranda or other materials in written form including machine readable form, prepared by Subcontractor and furnished to Chemonics pursuant to this Subcontract shall become the sole property of Chemonics.

#### C. Indemnity and Subcontractor Waiver of Benefits

The Subcontractor shall defend, indemnify, and hold harmless Chemonics from any loss, damage, liability, claims, demands, suits, or judgments ("Claims") including any reasonable attorney's fees, and costs, as a result of any damage or injury to Chemonics or its employees, directors, officers, or agents, or properties, or for any injury to third persons (including, but not limited to Claims by Subcontractor's employees, directors, officers or agents) or their property which is directly or indirectly caused by the negligence, willful misconduct, breach of this Subcontract, or violation of statutory duties of Subcontractor, or its employees, officers, directors, or agents, arising out of or in connection with the performance of this Subcontract unless such Claim is caused by, or resulting from, a material breach of this Subcontract by Chemonics.

#### D. Compliance with Applicable Laws and Regulations

(a) The Subcontractor shall perform all work, and comply in all respects, with applicable laws, ordinances, codes, regulations, and other authoritative rules of the United States and its political subdivisions and with the standards of relevant licensing boards and professional associations. The Subcontractor shall also comply with the applicable USAID regulations governing this subcontract, which are incorporated by reference into this subcontract, and appear in Section T, Clauses Incorporated by Reference.

(b) This contract shall be governed and construed under the laws of the District of Columbia, except that subcontract provisions and requirements that are based on government contract laws, regulations, or Federal Acquisition Regulation clauses shall be construed in accordance with the federal common law of Government Contracts as represented by decisions of the Federal Courts, and the Armed Services and Civilian Boards of Contract Appeals.

(c) The Subcontractor shall further undertake to perform the services hereunder in accordance with the highest standards of professional and ethical competence and integrity in Subcontractor's industry and to ensure that Subcontractor's employees assigned to perform any services under this subcontract will conduct themselves in a manner consistent therewith.

1. The Subcontractor 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 law.
2. The Subcontractor shall timely disclose, in writing, to Chemonics and the USAID Office of the Inspector General (OIG), whenever, in connection with this subcontract, or any Order issued hereunder, if applicable, the Subcontractor has credible evidence that a principal, employee, agent, or subcontractor of the Subcontractor has committed a violation of the provisions against fraud, conflict of interest, bribery or gratuity, or false claims found in this subcontract.
3. The Subcontractor shall refer to FAR 52.203-13 Contractor Code of Business Ethics and Conduct incorporated by reference herein for applicability of additional requirements.”

E. Privity of Contract and Communications

The Subcontractor shall not communicate with Chemonics’ client in connection with this Subcontract, except as expressly permitted, in writing, by Chemonics. All approvals required from USAID shall be obtained through Chemonics.

This provision does not prohibit the Subcontractor from communicating with the client with respect to:

- (a) matters the Subcontractor is required by law to communicate to the U.S. Government;
- (b) an ethics or anti-corruption matter;
- (c) any matter for which this Subcontract, including a FAR or AIDAR clause is included in this Subcontract, provides for direct communication by the Subcontractor to the U.S. Government; or
- (d) if Subcontractor is a U.S. small business concern, any material matter pertaining to payment or utilization.

F. Protecting Chemonics’ Interests when Subcontractor is Named on Suspected Terrorists or Blocked Individuals Lists, Ineligible to Receive USAID Funding, or Suspended, Debarred or Excluded from Receiving Federal Funds

In addition to any other rights provided under this subcontract, it is further understood and agreed that Chemonics shall be at liberty to terminate this subcontract immediately at any time following any of the following conditions:

- (a) the Subcontractor is named on any list of suspected terrorists or blocked individuals maintained by the U.S. Government, including but not limited to (a) the Annex to Executive Order No. 13224 (2001) (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or (b) the List of Specially Designated Nationals and Blocked persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury;
- (b) USAID determines that the Subcontractor is ineligible to receive USAID funding pursuant to U.S. laws and regulations; or
- (c) the Subcontractor is identified on the U.S. Government’s Excluded Party List System, or successor listing, as being suspended, debarred, or excluded from receiving federal awards or assistance.

Notwithstanding any other provision of the Subcontract, upon such termination the Subcontractor shall have no right to receive any further payments.

#### G. Governing Law and Resolution of Disputes

(a) *Governing law.* This Subcontract shall be governed and construed under the laws of the District of Columbia, except that subcontract provisions and requirements that are based on government contract laws, regulations, or Federal Acquisition Regulation clauses shall be construed in accordance with the federal common law of Government Contracts as represented by decisions of the Federal Courts, and the Armed Services and Civilian Boards of Contract Appeals.

1) (b) *Disputes based on Client Actions.*

2) (1) Any decision of the Government under the Prime Contract, if binding on Chemonics, shall also bind the Subcontractor to the extent that it relates to this Subcontract, provided that Chemonics shall have promptly notified the Subcontractor of such decision and, if requested by Subcontractor, shall have brought suit or filed claim, as appropriate against the Government, or, in alternative, agreed to sponsor Subcontractor's suit or claim. A final judgment in any such suit or final disposition of such claim shall be conclusive upon the Subcontractor.

3) (2) For any action brought, or sponsored, by Chemonics on behalf of the Subcontractor pursuant to this clause, the Subcontractor agrees to indemnify and hold Chemonics harmless from all costs and expenses incurred by Chemonics in prosecuting or sponsoring any such appeal.

(c) *Other Disputes.* All disputes not covered under subparagraph (b) above shall be resolved by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Arbitration shall be conducted in Washington, DC. Arbitrators shall be empowered to award only direct damages consistent with the terms of this Agreement. Each party shall bear its own costs of arbitration, including attorneys' and experts' fees. An arbitration decision shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

(d) *Duty to Continue to Perform.* Notwithstanding any such dispute, the Subcontractor shall proceed diligently with performance under this Subcontract in accordance with the Contractor's directions.

(e) *Limitations.* Chemonics' entire liability for claims arising from or related to this Subcontract will in no event exceed \$100,000. Except for indemnification obligations, neither the Subcontractor or Chemonics will have any liability arising from or related to this Subcontract for (i) special, incidental, exemplary, or indirect damages, or for any economic consequential damages, or (ii) lost profits, business, revenue, goodwill or anticipated savings, even if any of the foregoing is foreseeable or even if a party has been advised of the possibility of such damages.

The Subcontractor acknowledges and agrees that it has no direct action against the U.S. Government or USAID for any claims arising under this Subcontract.

#### H. Set-Off Clause

Chemonics reserves the right of set-off against amounts payable to Subcontractor under this Subcontract or any other agreement the amount of any claim or refunds Chemonics may have against Subcontractor.

#### I. Assignment and Delegation

This Subcontract agreement may not be assigned or delegated, in whole or in part, by the Subcontractor without the written consent of Chemonics. Absent such consent, any assignment is void.

#### J. Organizational Conflicts of Interest

It is understood and agreed that some of the work performed under this subcontract may place the Subcontractor or its personnel in the position of having an organizational conflict of interest. Such an



organizational conflict of interest may impair the objectivity of the Subcontractor or its personnel in performing the work. To preclude or mitigate any potential conflicts of interest, Subcontractor agrees not to undertake any activity which may result in an organizational conflict of interest without first notifying Chemonics of such potential conflict of interest and receiving Chemonics written approval to undertake such activities.

L. Gratuities and Anti-Kickback

(a) Subcontractor shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a Chemonics supplier.

(b) By accepting this Subcontract, Subcontractor certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

M. Terrorist Financing Prohibition/Executive Order 13224

The Subcontractor (including its employees, consultants and agents) by entering into this subcontract certifies that it does not engage, support or finance individuals and/or organizations associated with terrorism. The Subcontractor is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. A list of entities and individuals subject to restrictions, prohibitions and sanctions can be found at the web site of the Department of Treasury's Office of Foreign Assets Control (OFAC), at <http://treasury.gov/ofac>. It is the legal responsibility of the Subcontractor to ensure compliance with the Executive Order 13224 and other U.S. laws prohibiting terrorist financing. This provision must be included in all subcontracts or subawards issued under this subcontract.

N. Restrictions On Certain Foreign Purchases (FAR 52.225-13)

Except as authorized by the Department of Treasury's Office of Foreign Assets Control (OFAC), the Subcontractor shall not acquire for its use in the performance of this subcontract, any supplies or services if any proclamation, U.S. Executive Order, U.S. statute, or OFAC's implementing regulations (31 CFR Chapter V), would prohibit such a transaction by a U.S. person, as defined by law.

Except as authorized by OFAC, most transactions involving Cuba, Iran, North Korea, and Syria are prohibited, including importing/exporting to/from the United States, engaging in financial transactions, or facilitating any prohibited transactions by third parties. Lists of entities and individuals subject to economic sanctions – which are updated routinely - are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. It is the Subcontractor's responsibility to remain informed as to sanctioned parties and to ensure compliance with all relevant U.S. sanctions and trade restrictions. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

The Subcontractor shall insert this clause, including this paragraph, in all subcontracts and subawards issued under this subcontract.

O. Compliance With U.S. Export Laws

Subcontractor warrants and agrees to comply with all U.S. export laws and regulations and other applicable U.S. law and regulations, including but not limited to: (i) the Arms Export Control Act (AECA), 22 U.S.C. 2778 and 2779; (ii) Trading with the Enemy Act (TWEA), 50 U.S.C. App. §§ 1-44; (iii) International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120-130.; (iv) Export

Administration Act (EAA) of 1979 and the Export Administration Regulations (EAR) 15 C.F.R. Parts 730-774, (including the EAR anti-boycott provision); (v) the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701-1706 and Executive Orders of the President under IEEPA, 50 U.S.C. app. §§ 2401-2420; (vi) Office of Foreign Asset Controls (OFAC) Regulations, 31 C.F.R. Parts 500-598; and (vii) other applicable U.S. laws and regulations.

As required, subject to Chemonics' prior approval for all exports or imports under the Subcontract, Subcontractor shall determine any export license, reporting, filing or other requirements, obtain any export license or other official authorization, and carry out any customs formalities for the export of goods or services. Subcontractor agrees to cooperate in providing any reports, authorizations, or other documentation related to export compliance requested by Chemonics. Subcontractor agrees to indemnify, hold harmless and defend Chemonics for any losses, liabilities and claims, including as penalties or fines as a result of any regulatory action taken against Chemonics as a result of Subcontractor's non-compliance with this provision.

P. Compliance With U.S. Anti-Corruption Regulations

Subcontractor represents and warrants that it shall comply fully with the anti-bribery provisions of the U.S. Foreign Corrupt Practices Act, as amended ("FCPA"), as well as the a) UN Convention against Corruption (UNCAC), b) OECD Convention on the Bribery of Foreign Public Officials (OECD Convention); and c) any other applicable local anti-corruption laws, rules, and regulations if any part of this subcontract will be performed outside of the United States of America. Specifically, Subcontractor understands and agrees that it shall be unlawful for the Subcontractor and/or any officer, director, employee or agent of the Subcontractor to make any kind of offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to:

- (a) *any foreign official* (or foreign political party) for purposes of either influencing any act or decision of such foreign official in his official capacity, or inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or securing any improper advantage, or inducing such foreign official to use his influence with a foreign government, or instrumentality thereof, to affect or influence any act or decision of such government or instrumentality in order to assist such person in obtaining or retaining business for or with, or directing business to any person; or
- (b) *any person*, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official (or foreign political party), or to any candidate for foreign political office, for any of the prohibited purposes described above.

For purposes of this Subcontract "foreign official" means any appointed, elected, or honorary official or employee of a) a foreign government (or if this Subcontract is to be performed outside the United States than of the Host Country) or political party, or b) of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization (e.g., the UN, DFID, or WHO, or the World Bank).

For purposes of this Article, the "government" includes any agency, department, embassy, or other governmental entity, and any company or other entity owned or controlled by the government.

Q. Subcontractor Employee Whistleblower Rights

This Subcontract and Subcontractor employees working on this subcontract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

The Subcontractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

If lower tier subcontracting is authorized in this subcontract, the Subcontractor shall insert the substance of this clause in all subcontracts over the simplified acquisition threshold.

R. Miscellaneous

- (a) This Subcontract embodies the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between or among the parties relating to the subject matter hereof. No statement, representation, warranty, covenant, or agreement of any kind not expressly set forth in this Subcontract shall affect, or be used to interpret, change, or restrict the express terms and provisions of this Subcontract. Each of the parties hereto agrees to cooperate with the other parties hereto in effectuating this Subcontract and to execute and deliver such further documents or instruments and to take such further actions as shall be reasonably requested in connection therewith.
- (b) All statements, representations, warranties, covenants, and agreements in this Subcontract shall be binding on the parties hereto and shall inure to the benefit of the respective successors and permitted assigns of each Party hereto. Nothing in this Subcontract shall be construed to create any rights or obligations except among the parties hereto, and no person or entity shall be regarded as a third-party beneficiary of this Subcontract.
- (c) In the event that any court of competent jurisdiction shall determine that any provision, or any portion thereof, contained in this Subcontract shall be unenforceable or invalid in any respect, then such provision shall be deemed limited to the extent that such court deems it valid or enforceable, and as so limited shall remain in full force and effect. In the event that such court shall deem any such provision partially or wholly unenforceable, the remaining provisions of this Subcontract shall nevertheless remain in full force and effect.
- (d) The headings and captions contained in this Subcontract are for convenience only and shall not affect the meaning or interpretation of this Subcontract or of any of its terms or provisions.
- (e) Unless otherwise specifically agreed in writing to the contrary: (i) the failure of any party at any time to require performance by the other of any provision of this Subcontract shall not affect such party's right thereafter to enforce the same; (ii) no waiver by any party of any default by any other shall be valid unless in writing and acknowledged by an authorized representative of the non-defaulting party, and no such waiver shall be taken or held to be a waiver by such party of any other preceding or subsequent default; and (iii) no extension of time granted by any party for the performance of any obligation or act by any other party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.
- (f) Each party has been represented by its own counsel in connection with the negotiation and preparation of this Subcontract and, consequently, each party hereby waives the application of any rule of law that would otherwise be applicable in connection with the interpretation of this Subcontract, including but not limited to any rule of law to the effect that any provision of this Subcontract shall be interpreted or construed against the party whose counsel drafted that provision.
- (g) This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

S. Privacy Shield

For purposes of compliance with the EU-US Privacy Shield Framework (“Privacy Shield”), the Subcontractor agrees that it shall maintain the implementation of a data protection program which conforms to the same level of protection as is required by the Privacy Shield. To this end the Subcontractor shall:

1. Devise appropriate systems and procedures to ensure that its processing of the Personal Information is protected against unlawful destruction or accidental loss, alteration, unauthorized disclosure or access; and does not place Chemonics in breach of any of the privacy laws, which may include, without limitation, The Fair Credit Reporting Act, The Health Insurance Portability and Accountability Act, the Gramm-Leach-Bliley Act, the EU Directive 95/46/EC, the Regulation (EU) 2016/679, and EU Directive 2002/58/EC (collectively: “Privacy Laws”);
2. Promptly refer to Chemonics any requests, notices or other communication from data subjects, the national data protection authority established in the jurisdiction of Chemonics, or any other law enforcement authority, for such Chemonics to resolve;
3. Provide such information to Chemonics and take such action as Chemonics may reasonably require, and within the timeframes reasonably specified by Chemonics, to allow Chemonics to:
  - a) Comply with the rights of data subjects in relation to the Personal Information, as required by law, including (where applicable) subject-access rights and rights of rectification, or with notices served by a national data protection authority; and gain access to information enabling Chemonics to supervise the processing of the Personal Information by the Subcontractor;
  - b) Take all reasonable steps to ensure the reliability of any the Subcontractor employees, or other personnel, who have access to the Personal Information; and
  - c) Respond to any investigation, inquiry, notice, or similar action by a regulator with proper jurisdiction over the processing of Personal Information undertaken by the Subcontractor.
4. Not transfer any Personal Information from the EU to any country outside of the EU (nor to any subcontractor located outside of the EU) without (i) putting in place appropriate legal safeguards for the protection of such Personal Information, (ii) if required by applicable law, entering into a data transfer and/or processing agreement with each Chemonics affiliate, consistent with the requirements of applicable Law, and (iii) obtaining the prior written consent of Chemonics; and
5. Only collect, use, disclose, or otherwise process Personal Information upon instruction of Chemonics.

T. Federal Acquisition Regulation (FAR) And Agency For International Development Acquisition Regulation (AIDAR) Flowdown Provisions For Subcontracts And Task Orders Under USAID Prime Contracts

## **T.1 INCORPORATION OF FAR AND AIDAR CLAUSES**

The FAR and AIDAR clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Subcontract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act shall have no application to this Subcontract. Any reference to a “Disputes” clause shall mean the “Disputes” clause of this Subcontract.

## **T.2 GOVERNMENT SUBCONTRACT**

- (a) This Subcontract is entered into by the parties in support of a U.S. Government contract.
- (b) As used in the AIDAR clauses referenced below and otherwise in this Subcontract:

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contract" means this Subcontract.
3. "Contracting Officer" shall mean the U.S. Government Contracting Officer for Chemonics' government prime contract under which this Subcontract is entered.
4. "Contractor" and "Offeror" means the Subcontractor, which is the party identified on the face of the Subcontract with whom Chemonics is contracting, acting as the immediate subcontractor to Chemonics.
5. "Prime Contract" means the contract between Chemonics and the U.S. Government.
6. "Subcontract" means any contract placed by subcontractor or lower-tier subcontractors under this Contract.

**T.3 NOTES**

The following notes apply to the clauses incorporated by reference below only when specified in the parenthetical phrase following the clause title and date.

1. Substitute "Chemonics" for "Government" or "United States" throughout this clause.
2. Substitute "Chemonics Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and Chemonics" after "Government" throughout this clause.
4. Insert "or Chemonics" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to Subcontractor to/from the USAID Contracting Officer shall be through Chemonics.
6. Insert "and Chemonics" after "Contracting Officer", throughout the clause.
7. Insert "or Chemonics Procurement Representative" after "Contracting Officer", throughout the clause.
8. If the Subcontractor is a non-U.S. firm or organization, this clause applies to this Subcontract only if Work under the Subcontract will be performed in the United States or Subcontractor is recruiting employees in the United States to Work on the Contract.

**T.4 MODIFICATIONS REQUIRED BY PRIME CONTRACT**

The Subcontractor agrees that upon the request of Chemonics it will negotiate in good faith with Chemonics relative to modifications to this Subcontract to incorporate additional provisions herein or to change provisions hereof, as Chemonics may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of modifications to such Prime Contract. If any such modifications to this Subcontract causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment may be made pursuant to the "Changes" clause of this Subcontract.

**T.5 PROVISIONS INCORPORATED BY REFERENCE**

This Subcontract includes the appropriate flow-down clauses as required by the Federal Acquisition Regulation and the USAID Acquisition Regulation.

**The following Federal Acquisition Regulation (FAR) clauses apply to this Subcontract as indicated:**

Clause Number	Title	Date	Notes and Applicability
<u>52.202-1</u>	DEFINITIONS	NOV 2013	All subcontracts regardless of value
<u>52.203-3</u>	GRATUITIES	APR 1984	All subcontracts regardless of value (Note 4 applies)

Clause Number	Title	Date	Notes and Applicability
<a href="#">52.203-5</a>	COVENANT AGAINST CONTINGENT FEES	MAY 2014	All subcontracts regardless of value (Note 1 applies)
<a href="#">52.203-7</a>	ANTI-KICKBACK PROCEDURES	MAY 2014	All subcontracts regardless of value (Note 1 applies)
<a href="#">52.204-10</a>	REPORTING EXECUTIVE COMPENSATION AND FIRST TIER SUBCONTRACT AWARDS (Subparagraph (d)(2) does not apply.)	JUL 2013	If the Subcontractor meets the thresholds specified in paragraphs (d)(3) and (g)(2) of the clause, the Subcontractor shall report required executive compensation by posting to the Government's Central Contractor Registration (CCR) database. All information posted will be available to the general public.
<a href="#">52.204-23</a>	PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE AND SERVICES DEVELOPED BY KASPERSKY LAB AND OTHER COVERED ENTITIES	JUL 2018	Applies to all subcontracts, regardless of value or type. "Contractor" and "Contractor Employee" refer to "Subcontractor" and "Subcontractor Employee."
<a href="#">52.209-2</a>	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS - REPRESENTATION	DEC 2014	All subcontracts regardless of value (Note 1 applies)
<a href="#">52.209-10</a>	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS	DEC 2014	All subcontracts regardless of value (Note 1 applies)
<a href="#">52.215-19</a>	NOTIFICATION OF OWNERSHIP CHANGES	OCT 1997	Applies if this Subcontract meets the applicability requirements of FAR 15.408(k). (Note 5 applies.)
<a href="#">52.215-20</a>	REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA OR INFORMATION OTHER THAN CERTIFIED COST OR PRICING DATA.	OCT 2010	(Note 2 applies.)
<a href="#">52.215-21</a>	REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA OR INFORMATION OTHER THAN CERTIFIED COST OR PRICING DATA - MODIFICATIONS	OCT 2010	(Note 2 applies.)
<a href="#">52.217-8</a>	OPTION TO EXTEND SERVICES	NOV 1999	Insert "30 days" as <i>the period of time within which Chemonics may exercise the option.</i> (Notes 1 and 2 apply.)
<a href="#">52.217-9</a>	OPTION TO EXTEND THE TERM OF THE CONTRACT	MAR 2000	Insert "30 days" and "60 days" as the periods of time set forth in the clause. Delete paragraph (c) of the clause. (Notes 1 and 2 apply.)
<a href="#">52.222-3</a>	CONVICT LABOR	JUN 2003	Applies to all Subcontracts >\$3,000 involving some or all performance in the U.S.
<a href="#">52.222-21</a>	PROHIBITION OF SEGREGATED FACILITIES	FEB 1999	(Note 8 applies.) Does not apply to work performed outside the United States by Subcontractor employees who were not recruited within the United States.
<a href="#">52.222-22</a>	PREVIOUS CONTRACTS AND COMPLIANCE REPORT	FEB 1999	Applies if clause 52.222-26 applies.
<a href="#">52.222-26</a>	EQUAL OPPORTUNITY	MAR 2007	(Note 8 applies.) Does not apply to work performed outside the United States by Subcontractor employees who were not recruited within the United States.
<a href="#">52.222-29</a>	NOTIFICATION OF VISA DENIAL	JUN 2003	Applies to all Subcontracts regardless of type or value.
<a href="#">52.222-50</a>	COMBATING TRAFFICKING IN PERSONS (Alternate I applies when work is performed outside the U.S. and it is included in the Prime Contract)	MAR 2015	Applies to all Subcontracts, regardless of type, value. (Note 2 applies starting in paragraph c. In paragraph (h) Note 1 applies.)
<a href="#">52.223-6</a>	DRUG-FREE WORKPLACE	MAY 2001	Applies to all Subcontracts regardless of value or type. (Notes 2 and 4 apply)
<a href="#">52.223-18</a>	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING	AUG 2011	Applies if this Subcontract > \$3,000. (Note 8 applies.)
<a href="#">52.225-1</a>	BUY AMERICAN ACT -- SUPPLIES	FEB 2009	Applies if the Statement of Work contains other than domestic components. (Note 2 applies.)
<a href="#">52.225-13</a>	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	JUN 2008	Applies to all Subcontracts regardless of value or type

Clause Number	Title	Date	Notes and Applicability
<a href="#">52.225-14</a>	INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT	FEB 2000	Applies to all Subcontracts regardless of value or type
<a href="#">52.227-14</a>	RIGHTS IN DATA - GENERAL	DEC 2007	Applies to all subcontracts regardless of type or value. Delete paragraph (d) which is replaced by AIDAR 752.227-14.
<a href="#">52.228-3</a>	WORKER'S COMPENSATION INSURANCE (DEFENSE BASE ACT)	JUL 2014	Applies to all Subcontracts, regardless of type or value. See also AIDAR 752.228-3.
<a href="#">52.228-4</a>	WORKER'S COMPENSATION AND WAR- HAZARD INSURANCE OVERSEAS	APR 1984	Applies to all Subcontracts, regardless of type or value, only if the Prime Contracts includes this clause.
<a href="#">52.233-3</a>	PROTEST AFTER AWARD  Alternate I (JUN 1985) applies if this is a cost-reimbursement contract). In the event that Chemonics' client has directed Chemonics to stop performance of the Work under the Prime Contract under which this Subcontract is issued pursuant to FAR 33.1, Chemonics may, by written order to the Subcontractor, direct the Subcontractor to stop performance of the Work called for by this Subcontract.	AUG 1996	"30 days" means "20 days" in paragraph (b)(2). Note 1 applies except the first time "Government" appears in paragraph (f). In paragraph (f) add after "33.104(h) (1)" the following: "and recovers those costs from Chemonics".
<a href="#">52.237-8</a>	RESTRICTION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS	AUG 2003	Applies to Subcontracts--regardless of type and value--that include provision of host country national personnel.
<a href="#">52.237-9</a>	WAIVER OF LIMITATION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS	MAY 2014	Applies to Subcontracts--regardless of type and value--that include provision of host country national personnel ONLY if the Prime Contracts includes this clause.
<a href="#">52.242-13</a>	BANKRUPTCY	JUL 1995	Notes 1 and 2 apply.
<a href="#">52.242-15</a>	STOP-WORK ORDER  Alternate I (APR 1984) applies if this is a cost-reimbursement Subcontract.	AUG 1989	Notes 1 and 2 apply.
<a href="#">52.243-1</a>	CHANGES-FIXED PRICE (Alt III)	AUG 1987	Applies to Fixed Price Subcontracts of any value.
<a href="#">52.245-1</a>	GOVERNMENT PROPERTY (APR 2012) (ALT I)	APR 2012	"Contracting Officer" means "Chemonics" except in the definition of Property Administrator and in paragraphs (h)(1)(iii) where it is unchanged, and in paragraphs (c) and (h)(4) where it includes Chemonics. "Government" is unchanged in the phrases "Government property" and "Government furnished property" and where elsewhere used except in paragraph (d)(1) where it means "Chemonics" and except in paragraphs (d)(2) and (g) where the term includes Chemonics.
<a href="#">52.249-14</a>	EXCUSABLE DELAYS	APR 1984	(Note 2 applies; Note 1 applies to (c). In (a)(2) delete "or contractual".)

**The following Agency For International Development Acquisition Regulations (AIDAR) clauses apply to this Contract:**

Clause Number	Title	Date	Notes and Applicability
752.202-1	DEFINITIONS (ALT 70 AND ALT 72)	JAN 1990	Applies to all Subcontracts, regardless of value or type. "Contractor" and "Contractor Employee" refer to "Subcontractor" and "Subcontractor Employee".

Clause Number	Title	Date	Notes and Applicability
752.211-70	LANGUAGE AND MEASUREMENT	JUN 1992	Applies to all Subcontracts, regardless of type or value.
752.225-70	SOURCE AND NATIONALITY REQUIREMENTS	FEB 2012	Applies to all Subcontracts, regardless of type or value. (Notes 4, 5 and 7 apply)
752.227-14	RIGHTS IN DATA – GENERAL	OCT 2007	Applies to all Subcontracts regardless of type or value. This clause replaces paragraph (d) of FAR 52.227-14 Rights in Data—General.
752.228-3	WORKER’S COMPENSATION INSURANCE (DEFENSE BASE ACT)		The supplemental coverage described in this clause is required in addition to the coverage specified in FAR 52.228-3.
752.228-7	INSURANCE – LIABILITY TO THIRD PERSONS		The coverage described in this clause is added to the clause specified in FAR 52.228-7 as either paragraph (h) (if FAR 52.228-7 Alternate I is not used) or (i) (if FAR 52.228-7 Alternate I is used): (See FAR 52.228)
752.228-70	MEDICAL EVACUATION (MEDEVAC) SERVICES	JUL 2007	Applies to all Subcontracts requiring performance outside the U.S.
752.247-70	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS	OCT 1996	(Note 5 applies)
752.7004	EMERGENCY LOCATOR INFORMATION	JUL 1997	Applies to all Subcontracts performed in whole or in part outside the U.S., regardless of value. (Note 5 applies)
752.7005	SUBMISSION REQUIREMENTS FOR DEVELOPMENT EXPERIENCE DOCUMENTS	SEP 2013	Applies to all Subcontracts. (Note 5 applies)
752.7008	USE OF GOVERNMENT FACILITIES OR PERSONNEL	APR 1984	Applies to all Subcontracts regardless of value or type. (Note 5 applies)
752.7009	MARKING	JAN 1993	Applies to all Subcontracts. (Note 5 applies)
752.7010	CONVERSION OF U.S. DOLLARS TO LOCAL CURRENCY	APR 1984	Applies to all Subcontracts, regardless of value or type, involving performance outside the U.S. (Note 5 applies)
752.7013	CONTRACTOR-MISSION RELATIONSHIPS	JUN 2018	Applies to all subcontracts, regardless of value or type. “Contractor” and “Contractor Employee” refer to “Subcontractor” and “Subcontractor Employee.”
752.7025	APPROVALS	APR 1984	Applies to all Subcontracts. (Note 5 applies)
752.7033	PHYSICAL FITNESS (JULY 1997)	JUL 1997, PARTIALLY REVISED AUG 2014	Applies to all Subcontracts of any type or value involving performance outside the U.S. The requirements of this provision do not apply to employees hired in the Cooperating Country or to authorized dependents who were already in the Cooperating Country when their sponsoring employee was hired. (Note 5 applies)



**Annex 1      Cover Letter**

[Offeror: Insert date]

[Insert name of point of contact for RFP]  
[Insert designation of point of contact for RFP]  
[Insert project name]  
[Insert "Chemonics International Inc." or if there is a locally registered entity, use that name]  
[Insert project office address]

Reference:      Request for Proposals [Insert RFP name and number]

Subject:          [Offeror: Insert name of your organization]'s technical and cost proposals

Dear Mr./Mrs. [Insert name of point of contact for RFP]:

[Offeror: Insert name of your organization] is pleased to submit its proposal in regard to the above-referenced request for proposals. For this purpose, we are pleased to provide the information furnished below:

Name of Organization's Representative	_____
Name of Offeror	_____
Type of Organization	_____
Taxpayer Identification Number	_____
DUNS Number	_____
Address	_____
Address	_____
Telephone	_____
Fax	_____
E-mail	_____

As required by section I, I.7, we confirm that our proposal, including the cost proposal will remain valid for [insert number of days, usually 60 or 90] calendar days after the proposal deadline.

We are further pleased to provide the following annexes containing the information requested in the RFP.:

[Offerors: It is incumbent on each offeror to clearly review the RFP and its requirements. It is each offeror's responsibility to identify all required annexes and include them]

- I. Copy of registration or incorporation in the public registry, or equivalent document from the government office where the offeror is registered.
- II. Copy of company tax registration, or equivalent document.
- III. Copy of trade license, or equivalent document.
- IV. Evidence of Responsibility Statement.

Sincerely yours,

\_\_\_\_\_  
Signature  
[Offeror: Insert name of your organization's representative]  
[Offeror: Insert name of your organization]

## Annex 2 Required Certifications

### EVIDENCE OF RESPONSIBILITY

#### 1. Offeror Business Information

**Company Name:** Full Legal Name

**Address:** Address

**DUNS Number:** Enter the Data Universal Numbering System reference (DUNS) assigned to the company. (Instructions to Offerors: Offerors will provide their registered DUNS number for subawards valued at USD\$30,000 and above with Chemonics unless exempted. Exemption may be granted by Chemonics or based on a negative response to Section 3(a) below (ie, the offeror, in the previous tax year, had gross income from all sources under USD\$300,000). Dun & Bradstreet regulates the system and registration may be obtained online at <http://fedgov.dnb.com/webform>. If Offeror does not have a DUNS number and is unable to obtain one before proposal submission deadline, Offeror shall include a statement in their Evidence of Responsibility Statement noting their intention to register for a DUNS number should it be selected as the successful offeror or explaining why registration for a DUNS number is not applicable or not possible. Additional guidance on obtaining a DUNS number is available upon request.)

#### 2. Authorized Negotiators

Company Name proposal for Proposal Name may be discussed with any of the following individuals. These individuals are authorized to represent Company Name in negotiation of this offer in response to RFP No.

List Names of Authorized signatories

These individuals can be reached at Company Name office:

Address

Telephone/Fax

Email address

#### 3. Adequate Financial Resources

Company Name has adequate financial resources to manage this contract, as established by our audited financial statements (OR list what else may have been submitted) submitted as part of our response to this proposal.

If the offeror is selected for an award valued at \$30,000 or above, and is not exempted based on a negative response to Section 3(a) below, any first-tier subaward to the organization may be reported and made public through FSRS.gov in accordance with The Transparency Acts of 2006 and 2008. Therefore, in accordance with FAR 52.240-10 and 2CFR Part170, if the offeror positively certifies below in Sections 3.a and 3.b and negatively certifies in Sections 3.c and 3.d, the offeror will be required to disclose to Chemonics for reporting in accordance with the regulations, the names and total compensation of the organization's five most highly compensated executives. By submitting this proposal, the offeror agrees to comply with this requirement as applicable if selected for a subaward.

In accordance with those Acts and to determine applicable reporting requirements, Company Name certifies as follows:

- a) In the previous tax year, was your company's gross income from all sources above \$300,000?
- Yes  No
- b) In your business or organization's preceding completed fiscal year, did your business or organization (the legal entity to which the DUNS number belongs) receive (1) 80 percent or more of its annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; **and** (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?:
- Yes  No
- c) Does the public have access to information about the compensation of the executives in your business or organization (the legal entity to which the DUNS number it provided belongs) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986? (FFATA § 2(b)(1)):
- Yes  No
- d) Does your business or organization maintain an active registration in the System for Award Management ([www.SAM.gov](http://www.SAM.gov))?
- Yes  No

#### 4. Ability to Comply

**Company Name** is able to comply with the proposed delivery of performance schedule having taken into consideration all existing business commitments, commercial as well as governmental.

#### 5. Record of Performance, Integrity, and Business Ethics

**Company Name** record of integrity is (Instructions: Offeror should describe their record. Text could include example such as the following to describe their record: "outstanding, as shown in the Representations and Certifications. We have no allegations of lack of integrity or of questionable business ethics. Our integrity can be confirmed by our references in our Past Performance References, contained in the Technical Proposal.")

#### 6. Organization, Experience, Accounting and Operational Controls, and Technical Skills

(Instructions: Offeror should explain their organizational system for managing the subcontract, as well as the type of accounting and control procedure they have to accommodate the type of subcontract being considered.)

## 7. Equipment and Facilities

(Instructions: Offeror should state if they have necessary facilities and equipment to carry out the contract with specific details as appropriate per the subcontract SOW.)

## 8. Eligibility to Receive Award

(Instructions: Offeror should state if they are qualified and eligible to receive an award under applicable laws and regulation and affirm that they are not included in any list maintained by the US Government of entities debarred, suspended or excluded for US Government awards and funding. The Offeror should state whether they have performed work of similar nature under similar mechanisms for USAID.)

## 9. Commodity Procurement

(Instructions: If the Offeror does not have the capacity for commodity procurements - delete this section. If the Offeror does have the capacity, the Offeror should state their qualifications necessary to support the proposed subcontract requirements.)

## 10. Cognizant Auditor

(Instructions: Offeror should provide Name, address, phone of their auditors – whether it is a government audit agency, such as DCAA, or an independent CPA.)

## 11. Acceptability of Contract Terms

(Instructions: Offeror should state its acceptance of the proposed contract terms.)

## 12. Recovery of Vacation, Holiday and Sick Pay

(Instructions: Offeror should explain whether it recovers vacation, holiday, and sick leave through a corporate indirect rate (e.g. Overhead or Fringe rate) or through a direct cost. If the Offeror recovers vacation, holiday, and sick leave through a corporate indirect rate, it should state in this section the number of working days in a calendar year it normally bills to contracts to account for the vacation, holiday, and sick leave days that will not be billed directly to the contract since this cost is being recovered through the corporate indirect rate.)

## 13. Organization of Firm

(Instructions: Offeror should explain how their firm is organized on a corporate level and on practical implementation level, for example regionally or by technical practice.)

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

*One of the authorized negotiators listed in Section 2 above should sign*

Title: \_\_\_\_\_

Date: \_\_\_\_\_