

DEPARTMENT OF ENERGY

10 CFR Part 625

RIN 1901-AB15

Price Competitive Sale of Strategic Petroleum Reserve Petroleum; Standard Sales Provisions

AGENCY: Department of Energy.

ACTION: Final rule; revised appendix.

SUMMARY: On December 21, 1983, the Department of Energy (DOE) published in the **Federal Register** a final rule governing the price competitive sales of petroleum from the Strategic Petroleum Reserve (SPR) in the event that the SPR is drawn down to respond to a severe energy supply interruption or to meet obligations of the United States under the Agreement on an International Energy Program. The final rule provides for the publication and periodic update, as an appendix to the rule, of Standard Sales Provisions (SSPs) containing or describing contract clauses, terms and conditions of sale, and performance and financial responsibility measures, which may be used for particular sales of SPR petroleum. First published in interim final form on January 20, 1984, the SSPs have since been updated several times, with the latest version published in the **Federal Register** on October 8, 1998 (63 FR 54196). As provided in the rule, DOE is now issuing revised SSPs for use in an SPR drawdown.

EFFECTIVE DATE: As of July 7, 2005, these SSPs are adopted for use in the price competitive sale of SPR petroleum.

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I. Background

A. The Strategic Petroleum Reserve Drawdown Plan and Sales Rule

The Strategic Petroleum Reserve (SPR) was established by the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163, to store petroleum to diminish the impact of disruptions on petroleum supplies and to carry out the obligations of the United States under the International Energy Program. EPCA required the preparation of a "SPR Plan" detailing proposals for the development of the SPR. The SPR Plan was to include a Distribution Plan setting forth the methods for drawing down and distributing the SPR in the event of an emergency. In 1979, a detailed Distribution Plan was transmitted to Congress as Amendment No. 3 to the SPR Plan. This Distribution Plan set out a number of alternative distribution methods, ranging from allocation to price competitive sales.

In the Energy Emergency Preparedness Act of 1982, Pub. L. 97-229, Congress required a new "Drawdown" (Distribution) Plan. The new plan, SPR Plan Amendment No. 4, was transmitted to Congress on December 1, 1982, and provided that the principal method of distributing SPR oil would be price competitive sale.

On March 16, 1983, DOE published a notice of proposed rulemaking (48 FR 11125) to establish a framework for implementing the policies and procedures set out in SPR Plan Amendment No. 4. The final SPR sales rule (published at 48 FR 56538, December 21, 1983), adopted after consideration of public comments, provides for the establishment of Standard Sales Provisions (SSPs), containing contract terms and conditions expected to be contained in contracts for the sale of SPR petroleum. The final SPR sales rule is at 10 CFR part 625. The rule calls for the publication of the SSPs in the **Federal**

Register and the Code of Federal Regulations as an appendix to the rule (10 CFR 625.4(a)). The rule also provides for the periodic review and republication of the SSPs in the **Federal Register**, including any revisions to such provisions (10 CFR 625.4(b)).

Upon a Presidential decision to draw down the SPR, DOE would issue a Notice of Sale, announcing the amounts and types of the SPR petroleum to be sold, the delivery locations and modes, and other pertinent information. The rule provides that the Secretary of Energy or the Secretary's designee would specify in the Notice of Sale, by referencing the latest version of the SSPs, which of the terms and conditions in the SSPs would or would not apply to a particular sale (10 CFR 625.3(a); 625.4(c)). In addition, in the Notice of Sale, the Secretary could revise the terms and conditions, or add new ones applicable to that sale (10 CFR 625.3(a)). The rule provides that no contract could be awarded to an offeror who had not unconditionally agreed to all provisions made applicable by the Notice of Sale (10 CFR 625.3(c)).

B. General Sales Procedures

Under the SPR sales rule, the first step in the SPR competitive sales process is the issuance of a Notice of Sale which lists the volume, characteristics, and location of the petroleum for sale, delivery dates and procedures for submitting offers, as well as measures for assuring performance and financial responsibility.

Over the course of a drawdown, several Notices of Sale may be issued, each covering a sales period of one to two months. Offerors may have only five days from the date a Notice of Sale is issued until offers are due, with delivery of oil commencing no later than thirty days after the Presidential direction to draw down the Reserve. Subsequent sales periods will coordinate Notice of Sale issuance with standard industry delivery periods. Because of the possible short initial lead-time, the Department maintains a registry of prospective offerors who will receive electronic notification of all Notices of Sale.

The next step in the sales process is for prospective purchasers to submit offers, as specified in the Notice of Sale. Offerors must unconditionally accept all terms and conditions in the Notice of Sale, and submit an offer guarantee based on potential contract value. After submission, the offers are evaluated and "apparently successful offerors" are selected. The offer evaluation process is structured so that the offerors bidding the highest prices determine their

method of delivery, up to the limits of the distribution system, with specific delivery arrangements negotiated later in the process.

All apparently successful offerors are required, within five business days of being notified, to provide a letter of credit as a guarantee of performance and payment of amounts due under the contract. Upon timely receipt of the letters of credit, and a final determination by the Contracting Officer that offers are responsive and offerors responsible, the DOE issues the Notices of Award. Deliveries then commence to the purchasers, consistent with their arrangements for commercial pipeline or marine vessel transportation. Purchasers are invoiced following crude oil deliveries.

II. The Revised Standard Sales Provisions

A. Major Revisions

The SSPs are being revised as contemplated by the SPR sales rule. The revisions primarily relate to the increased use of the internet as the primary means of providing SPR program information and conducting business operations. The most significant of these revisions is the adoption by DOE of a web-based drawdown sales system for registering and communicating with potential offerors, posting sales documents and receiving offers. The new system replaces the existing registration database in its entirety, so any interested parties who had previously registered on DOE's Sales Offerors Mailing List must complete a new registration in order to receive drawdown sales notifications and participate in a sale. Also, due to the transference of the sales process to the internet, several former SSP exhibits, *e.g.*, Exhibit A, "Strategic Petroleum Reserve Sales Offer Form," have been eliminated as their functions have been superseded by the on-line program.

Other noteworthy revisions relate to the crude oil streams and delivery options offered during a sale. Maya crude oil is no longer stored as a separate segregation at the SPR, resulting in the elimination of former Master Line Item 003, Bryan Mound Maya. In addition, a change has been made to the nominal definition of marine delivery line items, wherein the three sequential 10-day periods within a sales cycle for vessel or barge deliveries have been replaced by a single 30-day period which coincides with the cycle. Also, as the SPR crude oil stream assays are periodically updated according to a long-term storage cavern sampling

program, the revised provisions provide an internet link to the latest assay files for each of the eight SPR crude oil streams.

In accordance with subsection 161(j) of the Energy Policy and Conservation Act (42 U.S.C. 6241(j)), the State of Hawaii, or a State-designated eligible entity authorized to act on the State's behalf, may submit a "binding offer" for the purchase of SPR petroleum. A new sales provision C.7 summarizes the rights accorded to the State under that authority.

Finally, cash wire deposits and electronic funds transfers to the account of the U.S. Treasury are no longer acceptable methods for submission of offer guarantees. An irrevocable standby letter of credit is now the only acceptable form of offer guarantee. Slightly revised irrevocable standby letter of credit formats have been provided for both the offer guarantee and the payment and performance guarantee. The instructions for the return of cash wire deposit or funds transfer offer guarantees have been eliminated.

The following is a provision-by-provision discussion of the noteworthy changes to the SSPs.

B. Revised Provisions

SSP No. A.1 List of abbreviations

SSP No. A.5 Sales Notification List (SNL)

These provisions make clear that the previous Sales Offeror Mailing List has been totally replaced by the new on-line Sales Notification List, and that new registration is required on the SNL.

SSP No. A.2 Definitions

New subparagraph (e) is the definition of an electronic signature, as recognized for the internet-based sales program.

SSP A.6 Publication of the Notice of Sale

This provision reinforces that such publication will primarily be accomplished by electronically notifying the SNL registrants and posting the document on identified Department of Energy websites.

SSP No. B.1 Requirements for a valid offer—caution to offerors

SSP No. B.9 Submission of offers and modification of previously submitted offers

These provisions stipulate that offers to purchase SPR petroleum must be submitted, modified or withdrawn using the internet-based sales system.

SSP No. B.7 State of Hawaii Access to SPR Crude Oil

The provision summarizes the rights of the State of Hawaii under its authority to submit a binding offer to purchase SPR petroleum in accordance with subsection 161(j) of the Energy Policy and Conservation Act (42 U.S.C. 6241(j)).

SSP No. B.12 Offer guarantee

This provision specifies that the only acceptable offer guarantee is an irrevocable standby letter of credit, and allows an offeror to fax a properly executed copy in advance of the original document. The issuing financial institution must be a participant in the Fedwire Deposit System Network funds transfer system.

SSP No. B.18 Notice of Sale line item schedule—petroleum quantity, quality, and delivery method

This provision redefines marine delivery line items (tanker and barge) to be single 30-day delivery periods instead of the former three sequential 10-day delivery periods within a sales cycle.

SSP No. B.22 Procedures for Evaluation of Offers

This provision describes how DOE evaluates offers in relation to the Government's estimates of the market values for each SPR crude oil stream offered for sale.

SSP No. C.21 Payment and Performance Letter of Credit

The requirement that the issuing financial institution be a participant in the Fedwire Deposit System Network funds transfer system also applies to payment and performance irrevocable standby letters of credit.

III. Procedural Requirements

A. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has determined that today's regulatory action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless

the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

No statute or other law requires DOE to propose today's rule for public comment. Accordingly, the requirements of the Regulatory Flexibility Act do not apply to this rulemaking.

C. Review Under the Paperwork Reduction Act

This rulemaking will impose no new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Department's implementing regulations at 10 CFR part 1021. Specifically, this rule is strictly procedural, and, therefore, is covered by the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March

14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. With respect to a proposed regulatory action that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100 million

or more (adjusted annually for inflation), section 202 of the Act requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a),(b)). The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under the Act (62 FR 12820) (also available at <http://www.gc.doe.gov>). The rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to

prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 625

Government contracts, Oil and gas reserves, Strategic and critical materials.

Issued in Washington, DC on May 20, 2005.

John D. Shages,

Deputy Assistant Secretary, Petroleum Reserves.

■ For the reasons set forth in the preamble, 10 CFR Part 625 is amended as follows:

PART 625—PRICE COMPETITIVE SALE OF STRATEGIC PETROLEUM RESERVE PETROLEUM

■ 1. The authority citation for Part 625 continues to read as follows:

Authority: 15 U.S.C. 761; 42 U.S.C. 7101; 42 U.S.C. 6201.

■ 2. Appendix A to 10 CFR part 625 is revised to read as follows:

Appendix A To Part 625—Standard Sales Provisions

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Section A—General Pre-Sale Information

A.1 List of Abbreviations

- (a) ASO: Apparently Successful Offeror
- (b) DLI: Delivery Line Item
- (c) DOE: U.S. Department of Energy
- (d) MLI: Master Line Item
- (e) NA: Notice of Acceptance
- (f) NS: Notice of Sale
- (g) SNL: Sales Notification List
- (h) SSPs: Standard Sales Provisions
- (i) SPR: Strategic Petroleum Reserve
- (j) SPRCODR: SPR Crude Oil Delivery Report (*Exhibit E*)
- (k) SPR/PMO: Strategic Petroleum Reserve Project Management Office

A.2 Definitions

Affiliate. The term "affiliate" means associated business concerns or individuals if, directly or indirectly, (1) either one controls or can control the other, or (2) a third party controls or can control both.

Business Day. The term "business day" means any day except Saturday, Sunday or a U.S. Government holiday.

Contract. The term "contract" means the contract under which DOE sells SPR petroleum. It is composed of the NS, the NA, the successful offer, and the SSPs incorporated by reference.

Contracting Officer. The term "Contracting Officer" means the person executing sales contracts on behalf of the Government, and any other Government employee properly designated as Contracting Officer. The term includes the authorized representative of a Contracting Officer acting within the limits of his or her authority.

Electronic signature or signature means a method of signing an electronic message that—

(1) Identifies and authenticates a particular person as the source of the electronic message; and

(2) Indicates such person's approval of the information contained in the electronic message.

Government. The term "Government", unless otherwise indicated in the text, means the United States Government.

Head of the Contracting Activity. The term "Head of the Contracting Activity" means Project Manager, Strategic Petroleum Reserve Project Management Office.

Notice of Acceptance (NA). The term "Notice of Acceptance" means the document that is sent by DOE to accept the purchaser's offer to create a contract.

Notification of Apparently Successful Offeror (ASO). The term "notification of apparently successful offeror" means the notice, written or oral, by the Contracting Officer to an offeror that it will be awarded a contract if it is determined to be responsible.

Notice of Sale (NS). The term "Notice of Sale" means the document announcing the sale of SPR petroleum, the amount, characteristics and location of the petroleum being sold, the delivery period and the procedures for submitting offers. The NS will specify what contractual provisions and financial and performance responsibility measures are applicable to that particular sale of petroleum and provide other pertinent information.

Offeror. The term "offeror" means any person or entity (including a government agency) who submits an offer in response to a NS.

Petroleum. The term "petroleum" means crude oil, residual fuel oil, or any refined product (including any natural gas liquid, and any natural gas liquid product) owned or contracted for by DOE and in storage in any permanent SPR facility, or temporarily stored in other storage facilities.

Project Management Office (SPR/PMO). The term "Project Management Office" means the DOE personnel and DOE contractors located in Louisiana and Texas responsible for the operation of the SPR.

Purchaser. The term "purchaser" means any person or entity (including a government agency) who enters into a contract with DOE to purchase SPR petroleum.

Standard Sales Provisions (SSPs). The term "Standard Sales Provisions" means this set of terms and conditions of sale applicable to price competitive sales of SPR petroleum. These SSPs constitute the "standard sales agreement" referenced in the Strategic Petroleum Reserve "Drawdown" (Distribution) Plan, Amendment No. 4 (December 1, 1982, DOE/EP 0073) to the SPR Plan.

Strategic Petroleum Reserve (SPR). The term "Strategic Petroleum Reserve" means that DOE program established by Title I, Part B, of the Energy Policy and Conservation Act, 42 U.S.C. 6201, as amended.

Vessel. The term "vessel" means a tankship, an integrated tug-barge (ITB) system, a self-propelled barge, or other barge.

A.3 Standard Sales Provisions (SSPs)

(a) These SSPs contain pre-sale information, sales solicitation provisions,

and sales contract clauses setting forth terms and conditions of sale, including purchaser financial and performance responsibility measures, or descriptions thereof, which may be applicable to price competitive sales of petroleum from the SPR in accordance with the SPR Sales Rule, 10 CFR Part 625. The NS will specify which of these provisions shall apply to a particular sale of such petroleum, and it may specify any revisions therein and any additional provisions which shall be applicable to that sale.

(b) All offerors must, as part of their offers for SPR petroleum in response to a NS, agree without exception to all sales provisions of that NS.

A.4 Periodic Revisions of the Standard Sales Provisions

DOE will review the SSPs periodically and republish them in the **Federal Register**, with any revisions. When an NS is issued, it will cite the **Federal Register** and the Code of Federal Regulations (if any) in which the latest version of the SSPs was published. Offerors are cautioned that the Code of Federal Regulations may not contain the latest version of the SSPs published in the **Federal Register**. Interested persons may view the current SSPs at <http://www.spr.doe.gov/reports/SSPs/ssp.htm>.

A.5 Sales Notification List (SNL)

(a) The SPR/PMO will maintain a Sales Notification List (SNL) of those potential offerors who wish to receive notification of an NS whenever one is issued. In order to assure that prospective offerors will receive such notification in a timely fashion, all potential offerors are encouraged to register on the SNL as soon as possible.

(b) Any firm or individual may complete the SNL on-line registration process at <http://www.spr.doe.gov>.

A.6 Publication of the Notice of Sale

(a) Notification of a NS will be sent via e-mail to those who have registered on the SNL referenced in Provision A.5.

(b) The NS will be posted on the SPR web page <http://www.spr.doe.gov> for public viewing. In addition, the issuance of the NS will be publicized on the Fossil Energy web page <http://www.fe.doe.gov/programs/reserves/>.

(c) A DOE press release, which will include the salient features of the NS, will be made available to all news agencies.

A.7 Penalty for False Statements in Offers to Buy SPR Petroleum

(a) Making false statements in an offer to buy SPR petroleum may expose an offeror to a penalty under the False Statements Act, 18 U.S.C. 1001, which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than 5 years, or both.

(b) Under 18 U.S.C. 3571, the maximum fine to which an individual or organization may be sentenced for violations of 18 U.S.C. (including Section 1001) is set at \$250,000 and \$500,000 respectively, unless there is a greater amount specified in the statute setting out the offense, or the violation is subject to special factors set out in Section 3571. The United States Sentencing Guidelines also apply to violations of Section 1001, and offenders may be subject to a range of fines under the guidelines up to and including the maximum amounts permitted by law.

Section B—Sales Solicitation Provisions

B.1 Requirements for a Valid Offer—Caution to Offerors

(a) Offerors are advised that the submission of an offer electronically is required. Submission of an offer via the SPR's specified on-line system will constitute a legal, binding offer. The use of the combination of User Name and password to login and submit offers constitutes an electronic signature.

(b) A valid offer to purchase SPR petroleum must meet the following conditions:

(1) The offer must be submitted via the SPR's on-line system as designated in the NS;

(2) The offer must be received no later than the date and time set for receipt of offers;

(3) The offer guarantee (see Provision B.12) must be received no later than the time set for the receipt of offers;

(4) Any amendments to the NS that explicitly require acknowledgment of receipt must be properly acknowledged as specified in the NS; and

(5) Submission of an on-line offer in accordance with this provision constitutes agreement without exception to all provisions of the SSPs that the NS makes applicable to a particular sale, as well as to all provisions in the NS.

(c) At the discretion of the Contracting Officer, offers may be received by alternative means if circumstances preclude use of the specified on-line system.

B.2 Price Indexing

The Government, at its discretion, may make use of a price indexing mechanism to effect contract price adjustments based on petroleum market conditions, e.g., crude oil market price changes between the times of offer price submissions and physical deliveries. The NS will set forth the provisions applicable to any such mechanism.

B.3 Certification of Independent Price Determination

(a) The offeror certifies that:

(1) The prices in this offer have been arrived at independently, without, for the purposes 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.

(2) 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 to any competitor before the time set for receipt of offers, unless otherwise required by law; and

(3) 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.

(b) Each submission of an offer is considered to be a certification by the offeror that the offeror:

(1) Is the person within the offeror's organization responsible for determining the prices being offered, and that the offeror has not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(2)(i) Has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) of this provision;

(ii) As their agent does hereby so certify; and

(iii) As their agent has not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

B.4 Requirements for Vessels—Caution to Offerors

(a) The "Jones Act", 46 U.S.C. 883, prohibits the transportation of any merchandise, including SPR petroleum, by water or land and water, on penalty of forfeiture thereof, between points within the United States (including Puerto Rico, but excluding the Virgin Islands) in vessels other than vessels built in and documented under laws of the United States, and owned by United States citizens, unless the prohibition has been waived by the Secretary of Homeland Security. Further, certain U.S.-flag vessels built with Construction Differential Subsidies (CDS) are precluded by Section 506 of the Merchant Marine Act of 1936 (46 U.S.C. 1156) from participating in U.S. coastwise trade, unless such prohibition has been waived by the Secretary of Transportation, the waiver being limited to a maximum of 6 months in any given year. CDS vessels may also receive Operating Differential Subsidies, requiring separate permission from the Secretary of Transportation for domestic operation, under Section 805(a) of the same statute. The NS will advise offerors of any general waivers allowing use of non-coastwise qualified vessels or vessels built with Construction Differential Subsidies for a particular sale of SPR petroleum. If there is no general waiver, purchasers may request waivers in accordance with Provision C.7, but remain obligated to complete performance under this contract regardless of the outcome of that waiver process.

(b) The Department of Homeland Security's regulations concerning Vessels Carrying Oil, Noxious Liquid Substances, Garbage, Municipal or Commercial Waste, and Ballast Water (33 CFR part 151) and Reception Facilities For Oil, Noxious Liquid Substances, and Garbage (33 CFR part 158) implement the requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL

73/78). These regulations prohibit any oceangoing tankship, required to retain oil or oily mixtures on-board while at sea, from entering any port or terminal unless the port or terminal has a valid Certificate of Adequacy as to its oil reception capabilities. Marine terminals in support of the SPR (see *Exhibit B*, SPR Delivery Point Data) have Certificates of Adequacy; however, they may not have reception facilities for oily ballast, vessel sludge or oily bilge water wastes. Accordingly, tankships will be required to make arrangements for and be responsible for all costs associated with appropriate disposal of such ballast, vessel sludge or oily bilge water waste or permission to load may be denied.

B.5 "Superfund" Tax on SPR Petroleum—Caution to Offerors

(a) Sections 4611 and 4612 of the Internal Revenue Code, provide for the imposition of taxes on domestic and imported petroleum to support the Hazardous Substance Response Fund (the "Superfund") and the Oil Spill Liability Trust Fund ("Trust Fund"). These taxes are not currently being collected.

(b) DOE has already paid the Superfund and Trust Fund taxes on some of the oil imported and stored in the SPR. However, no Superfund or Trust Fund tax has been paid on any domestic oil stored in the SPR or on imported oil stored prior to the imposition of these taxes. Because domestic and imported crude oil for which no Superfund and Trust Fund taxes have been paid and crude oils for which these taxes have been paid have been commingled in the SPR, the Government retains records of the tax status of all SPR petroleum in storage. The NS will advise purchasers in the event these taxes are reimposed.

B.6 Export Limitations and Licensing—Caution to Offerors

Offerors for SPR petroleum are put on notice that export of SPR crude oil is subject to U.S. export control laws implemented by the Department of Commerce Short Supply Controls, codified at 15 CFR part 754, § 754.2, Crude oil. Subsections of § 754.2 provide for the approval of applications to export crude oil from the SPR in connection with refining or exchange of SPR oil. Specifically, these subsections are §§ 754.2(b)(iii), and 754.2(f), Refining or exchange of Strategic Petroleum Reserve Oil. These provisions implement the authority given to the President by 42 U.S.C. 6241(i) to permit the export of oil in the SPR for the purpose of obtaining refined petroleum for the U.S. market. In addition, the President could waive the requirement for an export license altogether. The NS will advise of any waivers under this Presidential authority.

B.7 State of Hawaii Access to SPR crude oil

Potential offerors are advised that pursuant to subsection 161 (j) of the Energy Policy and Conservation Act (42 U.S.C. 6241 (j)), the State of Hawaii, or a State-designated eligible entity authorized to act on the State's behalf, may submit a "binding offer" for the purchase of SPR petroleum. By submission of a binding offer, the State of Hawaii is entitled to purchase up to three percent of the quantity of SPR petroleum offered for sale or

one-twelfth of the state's annual import quantity barrels. The price will be equal to the volumetrically weighted average price of the successful competitive offers for the applicable Master Line Item. Furthermore, at the request of the Hawaii or its designated eligible entity, the petroleum purchased will have first preference in its scheduling for delivery. The State of Hawaii may also enter into exchange or processing agreements to permit delivery of the purchased petroleum to other locations, if a petroleum product of similar value or quantity is delivered to the State.

B.8 Issuance of the Notice of Sale

In the event petroleum is sold from the SPR, DOE will issue a NS containing all the pertinent information necessary for the offeror to prepare a priced offer. A NS may be issued with a week or less allowed for the receipt of offers. Offerors are expected to examine the complete NS document, and to become familiar with the SSPs cited therein. Failure to do so will be at the offeror's risk.

B.9 Submission of Offers and Modification of Previously Submitted Offers

(a) Unless otherwise provided in the NS, offers must be submitted via SPR's on-line system and received no later than the date and time set for offer receipt as specified in the NS.

(b) Unless otherwise provided in the NS, offers may be modified or withdrawn on-line, provided that the modification or withdrawal is accomplished prior to the date and time specified for receipt of offers.

(c) An offeror may withdraw an offer by deleting the submission in accordance with the instructions provided for the SPR's on-line system.

(d) An offeror may modify a previously submitted offer by withdrawing the original offer (see (c) above) and resubmitting the replacement offer in its entirety no later than the date and time set for offer receipt.

(e) DOE will not release to the general public the identities of the offerors, or their offer quantities and prices, until the Apparently Successful Offerors have been determined. DOE will inform simultaneously all offerors and other interested parties of the successful and unsuccessful offerors and their offer data by means of a public "offer posting." The offer posting will normally occur within a week of receipt of offers and will provide all interested parties access to offer data as well as any DOE changes in the petroleum quantities or quality to be sold. DOE will announce the date, time, and location of the offer posting as soon as practicable.

B.10 Acknowledgment of Amendments to a Notice of Sale

When an amendment to a NS requires acknowledgment of issuance, it must be acknowledged by an offeror in accordance with instructions provided in the NS. Such acknowledgment must be received as part of a timely offer submission.

B.11 Late Offers, Modifications of Offers, and Withdrawal of Offers

(a) The date/time stamp affixed by the SPR's on-line system will be the sole determinant of timely offer receipt. Any offer

received after the date and time specified in the NS for receipt will be considered only if

(1) it is received before award is made; and

(2) the Contracting Officer determines that the late receipt was due solely to a failure of the Government's electronic receiving equipment, or

(3) it is the only offer received.

(b) Any modification or withdrawal of an offer is subject to the same conditions as in (a) of this provision.

(c) Notwithstanding (a) and (b) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

B.12 Offer Guarantee

(a) Each offeror must submit an acceptable offer guarantee for each offer submitted. Each offer guarantee must be received at the place specified in the NS no later than the date and time set for receipt of offers.

(b) An offeror's failure to submit a timely, acceptable guarantee will result in rejection of its offer. A properly executed copy of the offer guarantee(s) may be faxed to the telephone numbers provided in the NS, with the original sent to the Contracting Officer as provided in paragraph (d) of this provision.

(c) The amount of each offer guarantee is \$10 million or 5 percent of the maximum potential contract amount, whichever is less. The maximum potential contract amount is the sum of the products determined by multiplying the offer's maximum purchase quantity for each master line item, times the highest offer prices that the offeror would have to pay for that master line item if the offer were to be successful. The SPR on-line system will perform this calculation automatically as offer information is entered.

(d) For each offer, an offeror must submit an irrevocable standby letter of credit from a U.S. depository institution containing the substantive provisions set out in *Exhibit C*, Offer Standby Letter of Credit, all letter of credit costs to be borne by the offeror. If the letter of credit contains any provisions at variance with *Exhibit C* or fails to include any provisions contained in *Exhibit C*, nonconforming provisions must be deleted and missing substantive provisions must be added or the letter of credit will not be accepted. The depository institution must be located in and authorized to do business in

any state of the United States or the District of Columbia, and authorized to issue letters of credit by the banking laws of the United States or any state of the United States or the District of Columbia. The depository institution must be an account holder with the Federal Reserve Banking system and a participant (on line) in the Fed's Fedwire Deposit System Network funds transfer system. The original of the letter of credit must be sent to the Contracting Officer at the address specified in the NS. The issuing bank must provide documentation indicating that the person signing the letter of credit is authorized to do so, in the form of corporate minutes, the Authorized Signature List, or the General Resolution of Signature Authority.

(e) The envelope containing the original letter of credit shall clearly be marked "RE: NS # ____ OFFER STANDBY LETTER OF CREDIT (Name of Company)". Offerors are cautioned that if they provide more than one Offer Standby Letter of Credit for multiple offers and, due to the absence of clear information from the offeror, the Government is unable to identify which letter of credit applies to which offer, the Contracting Officer in his sole discretion may assign the letters of credit to specific offers.

(f) The offeror shall be liable for any amount lost by DOE due to the difference between the offer and the resale price, and for any additional resale costs incurred by DOE in the event that the offeror:

(1) withdraws its offer within 10 days following the time set for receipt of offers;

(2) withdraws its offer after having agreed to extend its acceptance period; or

(3) having received a notification of ASO, fails to furnish an acceptable payment and performance letter of credit (see Provision C.21) within the time limit specified by the Contracting Officer.

The offer guarantee shall be used toward offsetting such price difference or additional resale costs. Use of the offer guarantee for such recovery shall not preclude recovery by DOE of damages in excess of the amount of the offer guarantee caused by such failure of the offeror.

(g) Letters of credit furnished as offer guarantees must be valid for at least 60 calendar days after the date set for the receipt of offers.

(h) Offer guarantee letters of credit may be returned upon request to an unsuccessful

offeror 5 business days after expiration of the offeror's acceptance period, and, except as provided in (i) of this provision, to a successful offeror upon receipt of a satisfactory payment and performance letter of credit.

(i) If an offeror defaults on its offer, DOE will hold the offer guarantee so that damages can be assessed against it.

B.13 Explanation Requests From Offerors

Offerors may request explanations regarding meaning or interpretation of the NS from the individual at the telephone number and/or e-mail address indicated in the NS. On complex and/or significant questions, DOE reserves the right to have the offeror put the question in writing; explanation or instructions regarding these questions will be given as an amendment to the NS.

B.14 Currency for Offers

Prices shall be stated and invoices shall be paid in U.S. dollars.

B.15 Language of Offers and Contracts

All offers in response to the NS and all modifications of offers shall be in English. All correspondence between offerors or purchasers and DOE shall be in English.

B.16 Proprietary Data

Offer quantities and prices are not considered proprietary information. If any other information submitted in connection with a sale is considered proprietary, that information shall be identified by e-mail to the address indicated in the NS, and an explanation provided as to the reason such data should be considered proprietary. Any final decision as to whether the material so identified is proprietary will be made by DOE. DOE's Freedom of Information Act regulations governing the release of proprietary data shall apply.

B.17 SPR Crude Oil Streams and Delivery Points

(a) The geographical locations of the terminals, pipelines, and docks interconnected with permanent SPR storage locations, the SPR crude oil streams available at each location and the delivery points for those streams are as follows, (See also *Exhibit A*, SPR Crude Oil Comprehensive Analysis, and *Exhibit B*, SPR Delivery Point Data):

Geographical location	Delivery points	Crude oil stream
Freeport, Texas	Seaway Terminal or Seaway Pipeline Jones Creek.	SPR Bryan Mound Sweet, SPR Bryan Mound Sour
Texas City, Texas	Seaway Terminal or Local Pipelines	SPR Bryan Mound Sweet, SPR Bryan Mound Sour
Nederland, Texas	Sunoco Logistics Partners, Nederland Terminal.	SPR West Hackberry Sweet, SPR West Hackberry Sour, SPR Big Hill Sweet, SPR Big Hill Sour
Lake Charles, Louisiana	Shell 22-Inch/DOE Lake Charles Pipeline Connection.	SPR West Hackberry Sweet, SPR West Hackberry Sour
St. James, Louisiana	Shell Sugarland Terminal connected to LOCAP and Capline.	SPR Bayou Choctaw Sweet, SPR Bayou Choctaw Sour
Beaumont, Texas	Unocal Terminal	SPR Big Hill Sweet, SPR Big Hill Sour
Winnie, Texas	Shell 20-Inch Meter Station	SPR Big Hill Sweet, SPR Big Hill Sour

(b) The NS may change delivery points and it may also include additional crude oils, terminals, temporary storage facilities or systems utilized in connection with petroleum in transit to the SPR.

(c) The NS may contain additional information supplementing *Exhibit B*, SPR Delivery Point Data.

B.18 Notice of Sale Line Item Schedule—Petroleum Quantity, Quality, and Delivery Method

(a) Unless the NS provides otherwise, the possible master line items (MLI) that may be offered are as identified in Provision B.17. Currently, there are eight MLIs, one for each of the eight crude oil streams that the SPR has in storage. The NS may not offer all the possible MLIs.

(b) Each MLI contains multiple delivery line items (DLIs), each of which specifies an available delivery method and the nominal delivery period. Offerors are cautioned that the NS may alter the period of time covered by each DLI. The NS will specify which DLIs are offered for each MLI.

(1) DLI-A covers petroleum to be transported by pipeline, either common carrier or local. The nominal delivery period is one month.

(2) DLI-B covers petroleum to be transported by tankships. The nominal delivery period is one month.

(3) DLI-E covers petroleum to be transported by barges (Note: These DLIs are usually only applicable to deliveries of West Hackberry and Big Hill Sweet and Sour crude oil streams from Sun Docks). The nominal delivery period is one month.

(4) Where the storage site is connected to more than one terminal or pipeline, additional DLIs will be offered. The additional DLIs will include DLI-H, covering petroleum to be transported by pipeline over the period of a month; DLI-I, covering tankships, etc. The Notice of Sale will specify any additional DLIs which may be applicable.

(c) The NS will state the total estimated number of barrels to be sold on each MLI. An offeror may offer to buy all or part of the petroleum offered on an MLI. In making awards, the Contracting Officer shall attempt to achieve award of the exact quantities offered by the NS, but may sell a quantity of petroleum in excess of the quantity offered for sale on a particular MLI in order to match the DLI offers received. In addition, the Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers, if he determines, in his sole discretion after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of the Government because the prices offered for them are not reasonable, or that, in light of market conditions after offers are received, a lesser quantity than that offered should be sold.

(d) The NS will specify a minimum contract quantity for each DLI. To be responsive, an offer on a DLI must be for at least that quantity.

(e) The NS will specify the maximum quantity that could be sold on each of the DLIs. The maximum quantity is not an indication of the amount of petroleum that,

in fact, will be sold on that DLI. Rather, it represents DOE's best estimate of the maximum amount of the particular SPR crude oil stream that can be moved by that transportation system over the delivery period. The total DOE estimated DLI maximums may exceed the total number of barrels to be sold on that MLI, as the NS DLI estimates represent estimated transportation capacity, not the amount of petroleum offered for sale.

(f) The NS will not specify what portion of the petroleum that DOE offers on a MLI will, in fact, be sold on any given DLI. Rather, the highest priced offers received on the MLI will determine the DLIs against which the offered petroleum is sold.

(g) DOE will not sell petroleum on a DLI in excess of the DLI maximum; however, DOE reserves the right to revise its estimates at any time and to award or modify contracts in accordance with its revised estimates. Offerors are cautioned that: DOE cannot guarantee that such transportation capacity is available; offerors should undertake their own analyses of available transportation capacity; and each purchaser is wholly responsible for arranging all transportation other than terminal arrangements at the terminals listed in Provision B.17, which shall be made in accordance with Provision C.5. A purchaser against one DLI cannot change a transportation mode without prior written permission from DOE, although such permission will be given whenever possible, in accordance with Provision C.6.

(h) *Exhibit A*, SPR Crude Oil Comprehensive Analysis, contains nominal characteristics for each SPR crude oil stream. Prospective offerors are cautioned that these data may change with SPR inventory changes. The NS will provide, to the maximum extent practicable, the latest data on each stream offered.

B.19 Line Item Information To Be Provided in the Offer

(a) Each offeror, if determined to be an ASO on a DLI, agrees to enter into a contract under the terms of its offer for the purchase of petroleum in the offer and to take delivery of that petroleum (plus or minus 10 percent as provided for in Provision C.20) in accordance with the terms of that contract.

(b) An offeror may submit an offer for any or all the MLIs offered by the NS. However, offerors are cautioned that alternate offers on different MLIs are not permitted. For example, an offeror may offer to purchase 1,000,000 barrels of SPR West Hackberry Sweet and 1,000,000 barrels of SPR West Hackberry Sour, but may not offer to purchase, in the alternative, either 1,000,000 barrels of sweet or 1,000,000 barrels of sour.

(c) An offeror may submit multiple offers. However, separate on-line offers and offer guarantees must be submitted and each offer will be evaluated on an individual basis.

(d) The following information will be provided to DOE by the offeror on the SPR on-line offer form:

(1) Maximum MLI Quantity. The offer shall state the maximum quantity of each crude oil stream that the offeror is willing to buy.

(2) Desired Qty. The offer shall state the number of barrels that the offeror will accept on each DLI, *i.e.*, by the delivery mode and

during the delivery period specified. The quantity stated on a single DLI shall not exceed the Maximum MLI Quantity for the MLI. The offeror shall designate a quantity on at least one DLI for the MLI, but may designate quantities on more than one DLI. If the offeror is willing to accept alternate DLIs, the total of its desired DLI quantities would exceed its Maximum MLI quantity; otherwise, the total of its desired DLI quantities should equal its Maximum MLI quantity.

(3) Price. The offer shall state the price per barrel for each DLI for which the offeror has designated a Desired Qty. Where offers have indicated quantities on more than one DLI with a different price on each, DOE will award the highest priced DLI first. If the offeror has the same price for two or more DLIs, it may indicate its first choice, second choice, etc., for award of those items; if the offeror does not indicate a preference, or indicates the same preference for more than one DLI, DOE may select the DLIs to be awarded at its discretion. Prices may be stated in hundredths of a cent (\$0.0001). DOE shall drop from the offer and not consider any numbers of less than one one-hundredth of a cent.

(4) Accept Minimum Quantity. The offeror must choose whether to accept only the Desired Qty (by deselecting the Accept Min Qty checkbox to indicate an unwillingness to accept less than the Desired Qty for that DLI) or, in the alternative, to accept any quantity awarded between the offer's Desired Qty and the minimum contract quantity for the DLI (by leaving the Accept Min Qty checkbox selected). However, DOE will award less than the Desired Qty only if the quantity available to be awarded is less than the Desired Qty.

B.20 Mistake in Offer

(a) After receiving offers, the Contracting Officer shall examine all offers for mistakes. If the Contracting Officer discovers any quantity discrepancies, he may obtain from the offeror oral or written verification of the offer actually intended, but in any event, he shall proceed with offer evaluation applying the following procedures:

(1) In case of conflict between the maximum MLI quantity and the stated DLI quantities (for example, if a single stated DLI quantity exceeds the corresponding maximum MLI quantity), the lesser quantity will govern in the evaluation of the offer.

(2) In the event that the offer fails to specify a maximum MLI quantity, the offer will be evaluated as though the largest stated DLI quantity is the offer's maximum MLI quantity.

(b) In cases where the Contracting Officer has reason to believe a mistake not covered by the procedures set forth in paragraph (a) may have been made, he shall request from the offeror a verification of the offer, calling attention to the suspected mistake. The Contracting Officer may telephone the offeror and confirm the request by electronic means. The Contracting Officer may set a limit of as little as 6 hours for telephone response, with any required written documentation to be received within 2 business days. If no response is received, the Contracting Officer may determine that no error exists and proceed with offer evaluation.

(c) The Head of the Contracting Activity will make administrative determinations described in paragraphs (c)(1) and (c)(2) of this provision if an offeror alleges a mistake after receipt of offers and before award.

(1) The Head of the Contracting Activity may refuse to permit the offeror to withdraw an offer, but permit correction of the offer if clear and convincing evidence establishes both the existence of a mistake and the offer actually intended. However, if such correction would result in displacing one or more higher acceptable offers, the Head of the Contracting Activity shall not so determine unless the existence of the mistake and the offer actually intended are ascertainable substantially from the NS and offer itself.

(2) The Head of the Contracting Activity may determine that an offeror shall be permitted to withdraw an offer in whole, or in part if only part of the offer is affected, without penalty under the offer guarantee, where the offeror requests permission to do so and clear and convincing evidence establishes the existence of a mistake, but not the offer actually intended.

(d) In all cases where the offeror is allowed to make verbal corrections to the original offer, confirmation of these corrections must be received in writing within the time set by the Contracting Officer or the original offer will stand as submitted.

B.21 Evaluation of Offers

(a) The Contracting Officer will be the determining official as to whether an offer is responsive to the SSPs and the NS. DOE reserves the right to reject any or all offers and to waive minor informalities or irregularities in offers received.

(b) A minor informality or irregularity in an offer is an inconsequential defect the waiver or correction of which would not be prejudicial to other offerors. Such a defect or variation from the strict requirements of the NS is inconsequential when its significance as to price, quantity, quality or delivery is negligible.

B.22 Procedures for Evaluation of Offers

(a) Award on each DLI will be made to the responsible offerors that submit the highest priced offers responsive to the SSPs and the NS and that have provided the required payment and performance guarantee as required by Provision C.21.

(b) DOE will array all offers on an MLI from highest price to lowest price for award evaluation regardless of DLI. However, DOE will award against the DLIs and will not award a greater quantity on a DLI than DOE's estimate (which is subject to change at any time) of the maximum quantity that can be moved by the delivery method. Selection of the apparently successful offers involves the following steps:

(1) Any offers below the minimum acceptable price, if any minimum price has been established for the sale, will be rejected as nonresponsive.

(2) All offers on each MLI will be arrayed from highest price to lowest price.

(3) (i) Offers may be rejected if they are below 95 percent of the sales price, as estimated by the Government, of comparable crude oil being sold in the same area at the

same time. In making the sales price estimate, the Government will consider both the "Base Reference Price" as defined in the Notice of Sale and other available information bearing on the issue.

(ii) For price offers at or above 95 percent of the sales price estimate, the Contracting Officer will determine price reasonableness, considering offers received and prevailing market conditions.

(iii) Price offers below 95 percent may be accepted only if the Contracting Officer determines such action is necessary to achieve SPR crude oil supply objectives and such offered prices are reasonable.

(4) The highest priced offers will be reviewed for responsiveness to the NS.

(5) In the event the highest priced offer does not take all the petroleum available on the MLI, sequentially, the next highest priced offer will be selected until all of the petroleum offered on the MLI is awarded or there are no more acceptable offers. In the event that acceptance of an offer against an MLI or a DLI would result in the sale of more petroleum on an MLI than DOE has offered or the sale of more petroleum on a DLI than DOE estimates can be delivered by the specified delivery method, DOE will not award the full amount of the offer, but rather the remaining MLI quantity or DLI capacity, provided such portion exceeds DOE's minimum contract quantity. In the event that the quantity remaining is less than the offeror is willing to accept, but more than DOE's minimum contract quantity, the Contracting Officer shall proceed to the next highest priced offer.

(6) In the event of tied offers and an insufficient remaining quantity available on the MLI or insufficient remaining capacity on the DLI to fully award all tied offers, the Contracting Officer shall apply an objective random methodology for allocating the remaining MLI quantity or DLI capacity among the tied offers, taking into consideration the quantity the offeror is willing to accept as indicated in its offer. When making this allocation, the Contracting Officer in his sole discretion may do one or more of the following:

(i) Make an additional quantity or capacity available;

(ii) Contact an offeror to determine whether alternative delivery arrangements can be made; or

(iii) Not award all or part of the remaining quantity of petroleum.

(7) The Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers if in his sole discretion he determines, after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of the Government because the prices offered for them are not reasonable; or if the Government determines, in light of market conditions after offers are received, to sell less than the overall quantity of SPR petroleum offered for sale.

(8) Determinations of ASO responsibility will be made by the Contracting Officer before each award. All ASOs will be notified and advised to provide to the Contracting Officer within five business days a letter of credit (*See Exhibit D, Payment and*

Performance Letter of Credit) as specified in Provision C.21, all letter of credit costs to be borne by the purchaser.

(9) Compliance with required payment and performance guarantees will effectively assure a finding of responsibility of offerors, except where:

(i) An offeror is on either DOE's or the Federal Government's list of debarred, ineligible and suspended bidders; or

(ii) Evidence, with respect to an offeror, comes to the attention of the Contracting Officer of conduct or activity that represents a violation of law or regulation (including an Executive Order); or

(iii) Evidence is brought to the attention of the Contracting Officer of past activity or conduct of an offeror that shows a lack of integrity (including actions inimical to the welfare of the United States) or willingness to perform, so as to substantially diminish the Contracting Officer's confidence in the offeror's performance under the proposed contract.

B.23 Financial Statements and Other Information

(a) As indicated in Provision B.22(b)(9), compliance with the required payment and performance guarantee will in most instances effectively assure a finding of responsibility. Therefore, DOE does not intend to ask for financial information from all offerors. However, after receipt of offers, but prior to making award, DOE reserves the right to ask for the audited financial statements for an offeror's most recent fiscal year and unaudited financial statements for any subsequent quarters. These financial statements must include a balance sheet and profit and loss statement for each period covered thereby. A certification by a principal accounting officer that there have been no material changes in financial condition since the date of the audited statements, and that these present the true financial condition as of the date of the offer, shall accompany the statements. If there has been a change, the amount and nature of the change must be specified and explained in the unaudited statements and a principal accounting officer shall certify that they are accurate. The Contracting Officer shall set a deadline for receipt of this information.

(b) DOE also reserves the right to require the submission of information from the offeror regarding its plans for use of the petroleum, the status of requests for export licenses, plans for complying with the Jones Act, and any other information relevant to the performance of the contract. The Contracting Officer shall set a deadline for receipt of this information.

B.4 Resolicitation Procedures on Unsold Petroleum

(a) In the event that petroleum offered on an MLI remains unsold after evaluation of all offers, the Contracting Officer, at his option, may issue an amendment to the NS, resoliciting offers from all interested parties. DOE reserves the right to alter the MLIs and/or offer different MLIs in the resolicitation.

(b) In the event that for any reason petroleum that has been awarded or allotted for award becomes available to DOE for resale, the following procedures will apply:

(1) If priced offers remain valid in accordance with Provision B.25, the petroleum may go to the next highest ranked offer.

(2) If offers have expired in accordance with Provision B.25, the Contracting Officer at his option may offer the petroleum to the highest offeror for that MLI. The pertinent offeror may, at its option, accept or reject that petroleum at the price it originally offered. If that offeror rejects the petroleum, it may be offered to the next highest offeror. This process may continue until all the remaining petroleum has been allotted for award.

(3) If the petroleum is not then resold, the Contracting Officer may at his option proceed to amend the NS to resolicit offers for that petroleum or add the petroleum to the next sales cycle.

B.25 Offeror's Certification of Acceptance Period

(a) By submission of an offer, the offeror certifies that its priced offer will remain valid for 10 calendar days after the date set for the receipt of offers, and further that the successful line items of its offer will remain valid for an additional 30 calendar days should it receive a notification of ASO either by telephone or in writing during the initial 10-day period.

(b) By mutual agreement of DOE and the offeror, an individual offeror's acceptance period may be extended for a longer period.

B.26 Notification of Apparently Successful Offeror

The following information concerning its offer will be provided to the apparently successful offeror by DOE in the notification of ASO:

(a) Identification of SPR crude oil streams to be awarded;

(b) Total quantity to be awarded on each MLI and on each DLI;

(c) Price in U.S. dollars per barrel for each DLI;

(d) Extended total price offer for each DLI;

(e) Provisional contract number;

(f) Any other data necessary.

B.27 Contract Documents

If an offeror is successful, DOE will make award using an NA signed by the Contracting Officer. The NA will identify the items, quantities, prices and delivery method which DOE is accepting. The NS will be attached to the NA. Provisions of the SSPs will be made applicable through incorporation by reference in the NS. DOE may accept the offeror's offer by an electronic notice and the contract award shall be effective upon issuance of such notice. The electronic notice will be followed by a mailing of full documentation as described in Provision B.26.

B.28 [Reserved]

B.29 Procedures for Selling to Other U.S. Government Agencies

(a) If a U.S. Government agency submits an offer for petroleum in a price competitive sale, that offer will be arrayed for award consideration in accordance with Provision B.22. If a U.S. Government agency is an ASO, award and payment will be made exclusively in accordance with statutory and regulatory

requirements governing transactions between agencies, and the U.S. Government agency will be responsible for complying with these requirements within the time limits set by the Contracting Officer.

(b) U.S. Government agencies are exempt from all guarantee requirements, but must make all necessary arrangements to accept delivery of and transport SPR petroleum as set out in Provision C.1. Failure by a U.S. Government agency to comply with any of the requirements of these SSPs shall not provide a basis for challenging a contract award to that agency.

Section C—Sales Contract Provisions

C.1 Delivery of SPR Petroleum

(a) The purchaser, at its expense, shall make all necessary arrangements to accept delivery of and transport the SPR petroleum, except for terminal arrangements which shall be coordinated with the SPR/PMO. The DOE will deliver and the purchaser will accept the petroleum at delivery points listed in the NS. The purchaser also shall be responsible for meeting any delivery requirements imposed at those points including complying with the rules, regulations, and procedures contained in applicable port/terminal manuals, pipeline tariffs or other applicable documents.

(b) For petroleum in the SPR's permanent storage sites, DOE shall provide, at no cost to the purchaser, transportation by pipeline from the SPR to the supporting SPR distribution terminal facility specified for the MLI and, for vessel loadings, a safe berth and loading facilities sufficient to deliver petroleum to the vessel's permanent hose connection. The purchaser agrees to assume responsibility for, to pay for, and to indemnify and hold DOE harmless for any other costs associated with terminal, port, vessel and pipeline services necessary to receive and transport the petroleum, including but not limited to demurrage charges assessed by the terminal, ballast and oily waste reception services, mooring and line-handling services, tank storage charges and port charges incurred in the delivery of SPR petroleum to the purchaser. The purchaser also agrees to assume responsibility for, to pay for and to indemnify and hold DOE harmless for any liability, including consequential or other damages, incurred or occasioned by the purchaser, its agent, subcontractor at any tier, assignee or any subsequent purchaser, in connection with movement of petroleum sold under a contract incorporating this provision.

C.2 Compliance With the "Jones Act" and the U.S. Export Control Laws

Failure to comply with the "Jones Act," 46 U.S.C. 883, regarding use of U.S.-flag vessels in the transportation of oil between points within the United States, and with any applicable U.S. export control laws affecting the export of SPR petroleum will be considered to be a failure to comply with the terms of any contract containing these SSPs and may result in termination for default in accordance with Provision C.25. Purchasers who have failed to comply with the "Jones Act" or the export control laws in SPR sales may be found to be non-responsible in the evaluation of offers in subsequent sales under

Provision B.22 of the SSPs. Those purchasers may also be subject to proceedings to make them ineligible for future awards in accordance with 10 CFR Part 625.

C.3 [Reserved]

C.4 Environmental Compliance

(a) SPR offerors must ensure that vessels used to transport SPR oil comply with all applicable statutes, including, among others, the Ports and Waterways Safety Act of 1972; the Port and Tanker Safety Act of 1978; the Act to Prevent Pollution from Ships of 1980 (implementing Annexes I, II, and V of MARPOL 73/78), and the Oil Pollution Act of 1990. Offerors also must ensure that vessels used to transport SPR oil comply with all applicable regulations, including 33 CFR parts 151, 153, 155, 157, 159, and 160–169, and 46 CFR chapter I, subchapter D.

(b) To transport SPR oil, a purchaser or the purchaser's subcontractors must use only those tank vessels for which the vessel's owner, operator, or demise charter has made a showing of financial responsibility under 33 CFR part 138, *Financial Responsibility for Water Pollution (Vessels)*.

(c) Failure of the purchaser or purchaser's subcontractor to comply with all applicable statutes and regulations in the transportation of SPR petroleum will be considered a failure to comply with the terms of any contract containing these SSPs, and may result in termination for default, unless, in accordance with Provision C.25, such failure was beyond the control and without the fault or negligence of the purchaser, its affiliates, or subcontractors.

C.5 Delivery and Transportation Scheduling

(a) Unless otherwise instructed in the notification of ASO, each purchaser shall submit a proposed vessel lifting program and/or pipeline delivery schedule to the SPR/PMO point of contact identified in the NS, no later than the fifteenth day prior to the earliest delivery date offered by the NS. The vessel lifting program shall specify the requested three-day loading window for each tanker and the quantity to be lifted. The pipeline schedule will specify the five day shipment ranges (*i.e.*, day 1–5, 6–10, 11–15, etc.) for which deliveries are to be tendered to the pipeline and the quantity to be tendered for each date. In the event conflicting requests are received, preference will be given to such requests in descending order, the highest offered price first. The SPR/PMO will respond to each purchaser no later than the tenth day prior to the start of deliveries, either confirming the schedule as originally submitted or proposing alterations. The purchaser shall be deemed to have agreed to those alterations unless the purchaser requests the SPR/PMO to reconsider within two days after receipt of such alterations. The SPR/PMO will use its best efforts to accommodate such requests, but its decision following any such reconsideration shall be final and binding.

(b) In order to expedite the scheduling process, at the time of submission of each vessel lifting program or pipeline delivery schedule, each purchaser shall provide the DOE Contracting Officer's Representative with a written notice of the intended

destination for each cargo scheduled, if such destination is known at that time. For pipeline deliveries, the purchaser shall also include, if known, the name of each pipeline in the routing to the final destination.

(c) Notwithstanding paragraph (a) of this provision, ASOs and purchasers may request early deliveries, *i.e.*, deliveries commencing prior to the contractual delivery period. DOE will use its best efforts to honor such requests, unless unacceptable costs might be incurred or SPR schedules might be adversely affected or other circumstances make it unreasonable to honor such requests. DOE's decision following any such consideration for a change shall be final and binding. Requests accepted by DOE will be handled on a first-come, first-served basis, except that where conflicting requests are received on the same day, the highest-priced offer will be given preference. Requests that include both a change in delivery method and an early delivery date may also be accommodated subject to Provision C.6. DOE may not be able to confirm requests for early deliveries until 24 hours prior to the delivery date.

(d) Notwithstanding paragraphs (a) and (c) of this provision, in no event will schedules be confirmed prior to award of contracts.

C.6 Contract Modification—Alternate Delivery Line Items

(a) A purchaser may request a change in delivery method after the issuance of the NA. Such requests may be made either orally (to be confirmed in writing within 24 hours) or in writing, but will require written modification of the contract by the Contracting Officer. Such modification shall be permitted by DOE, provided, in the sole judgment of DOE, the change is viewed as reasonable and would not interfere with the delivery plans of other purchasers, and further provided that the purchaser agrees to pay all increased costs incurred by DOE because of such modification.

(b) Changes in delivery method will only be considered after the initial confirmation of schedules described in Provision C.5(a).

C.7 Application Procedures for "Jones Act" and Construction Differential Subsidy Waivers

(a) Unless otherwise specified in the Notice of Sale, an ASO or purchaser seeking a waiver of the "Jones Act" should submit a request by letter or electronic means to: U.S. Bureau of Customs and Border Protection, Office of Regulations and Rulings, Chief, Entry Procedures and Carriers Branch, Washington, DC 20229, Telephone: (202) 572-8724.

(b) A purchaser seeking a waiver to use a vessel built with a Construction Differential Subsidy should have the vessel owner submit a waiver request by letter or electronic means to: Associate Administrator for Ship Financial Assistance and Cargo Preference, Maritime Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

For speed and brevity, the request may incorporate by reference appropriate contents of any earlier "Jones Act" waiver request by the purchaser. Under 46 U.S.C. App. 1223, a hearing is also required for any intervenor,

and a waiver may not be approved if it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service.

(c) Copies of the Jones Act or CDS waiver requests should also be sent, as appropriate, to:

- (1) Associate Administrator for Port, Intermodal and Environmental Activities, Maritime Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.
- (2) U.S. Department of Energy, ATTN: Deputy Assistant Secretary for Petroleum Reserves, FE-40, 1000 Independence Avenue, SW., Washington, DC 20585.
- (3) Contracting Officer, FE-4451, Strategic Petroleum Reserve Project Management Office, Acquisition and Sales Division, 900 Commerce Road East, New Orleans, LA 70123.

(d) In addition to the addresses in paragraph (c), copies of the "Jones Act" request should also be sent to: Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), U.S. Department of Defense, Washington, DC 20301-3020.

(e) Any request for waiver should include the following information:

- (1) Name, address and telephone number of requestor;
- (2) Purpose for which waiver is sought, *e.g.*, to take delivery of so many barrels of SPR crude oil, with reference to the SPR NS number and the provisional or assigned contract number;
- (3) Name and flag of registry of vessel for which waiver is sought, if known at the time of waiver request, and the scheduled 3-day delivery window(s), if available, or delivery period applicable to the contract;
- (4) The intended number of voyages, including the ports for loading and discharging;
- (5) Estimated period of time for which vessel will be employed; and
- (6) Reason for not using qualified U.S.-flag vessel, including documentary evidence of good faith effort to obtain suitable U.S.-flag vessel and responses received from that effort. Such evidence would include copies of correspondence and telephone conversation summaries. Requests for waivers by electronic transmittals may reference such documentary evidence, with copies to be provided by mail, postmarked no more than one business day after the transmission requesting the waiver.
- (7) For waivers to use Construction Differential Subsidy vessels, the request must also contain a specific agreement for Construction Differential Subsidies payback pursuant to section 506 of the Merchant Marine Act of 1936 and must be signed by an official of the vessel owner authorized to make a payback commitment.

(f) If there are shown to be "Jones Act" vessels available and in a position to meet the loading dates required, no waivers may be approved.

(g) The names of any vessel(s) to be employed under a "Jones Act" waiver must be provided to the U.S. Bureau of Customs and Border Protection no later than 3 days prior to the beginning of the 3-day loading window scheduled in accordance with Provision C.5.

C.8 Vessel Loading Procedures

(a) After notification of ASO, each ASO shall provide the SPR/PMO a proposed schedule of vessel loading windows in accordance with Provision C.5.

(b) The length of the scheduled loading window shall be 3 days. If the purchaser schedules more than one window, the average quantity to be lifted during any single loading window will be no less than DOE's minimum lot quantity.

(c) Tankships, ITBs, and self-propelled barges shall be capable of sustaining a minimum average load rate commensurate with receiving an entire full cargo within twenty-four (24) hours pumping time. Barges with a load rate of not less than 4,000 BPH shall be permitted at the Sun Terminal barge docks. With the consent of the SPR/PMO, lower loading rates and the use of barges at suitably equipped tankship docks at other terminals supporting the SPR may be permitted if such do not interfere with DOE's obligations to other parties.

(d) At least 7 days in advance of the beginning of the scheduled loading window, the purchaser shall furnish the SPR/PMO with vessel nominations specifying:

(i) Name and size of vessel or advice that the vessel is "To Be Nominated" at a later date (such date to be no later than 3 days before commencement of the loading window);

(ii) Estimated date of arrival (to be narrowed to a firm date not later than 72 hours prior to the first day of the vessel's 3-day window, as provided in paragraph (f) of this provision);

(iii) Quantity to be loaded and contract number; and

(iv) Other relevant information requested by the SPR/PMO including but not limited to ship's specifications, last three ports and cargoes, vessel owner/operator and flag, any known deficiencies, and on board quantities of cargo and slops.

DOE will advise the purchaser, in writing, of the acceptance or rejection of the nominated vessel within 24 hours of such nomination. If no advice is furnished within 24 hours, the nomination will be firm. Once established, changes in such nomination details may be made only by mutual agreement of the parties, to be confirmed by DOE in writing. The purchaser shall be entitled to substitute another vessel of similar size for any vessel so nominated, subject to DOE's approval. DOE must be given at least 3 days' notice prior to the first day of the 3-day loading window of any such substitution. DOE shall make a reasonable effort to accept any nomination for which notice has not been given in strict accordance with this provision.

(e) In the event the purchaser intends to use more than one vessel to take delivery of the contract quantity scheduled to be delivered during a loading window, the information in paragraphs (d) and (f) of this provision shall be provided for each vessel.

(f) The vessel or purchaser shall notify the SPR/PMO of the expected day of arrival 72 hours before the beginning of his scheduled 3-day loading window. This notice establishes the firm agreed-upon date of arrival which is the 1-day window for the

purposes of vessel demurrage (see Provision C.9). If the purchaser fails to make notification of the expected day of arrival, the 1-day window will be deemed to be the middle day of the scheduled 3-day window. The vessel shall also notify the SPR/PMO of the expected hour of arrival 72, 48 and 24 hours in advance of arrival, and after the first notice, to advise of any variation of more than 4 hours. With the first notification of the hour of arrival, the Master shall advise the SPR/PMO:

- (i) Cargo loading rate requested;
- (ii) Number, size, and material of vessel's manifold connections; and
- (iii) Defects in vessel or equipment affecting performance or maneuverability.

(g) Notice of Readiness shall be tendered upon arrival at berth or at customary anchorage which is deemed to be any anchorage within 6 hours vessel time to the SPR dock. The preferred anchorages are identified in *Exhibit B*. The Notice of Readiness shall be confirmed promptly in writing to the SPR/PMO and the terminal responsible for coordination of crude oil loading operations. Such notice shall be effective only if given during customary port operating hours. If notice is given after customary business hours of the port, it shall be effective as of the beginning of customary business hours on the next business day.

(h) DOE shall use its best efforts to berth the purchaser's vessel as soon as possible after receipt of the Notice of Readiness.

(i) Standard hose and fittings (American Standard Association standard connections) for loading shall be provided by DOE. Purchasers must arrange for line handling, deballasting, tug boat and pilot services, both for arrival and departure, through the terminal or ship's agent, and bear all costs associated with such services.

(j) Tankships, ITBs, and self-propelled barges shall be allowed berth time of 36 hours. Barges shall be allowed berth time of three (3) hours plus the quotient determined by dividing the cargo size (gross standard volume barrels) by four thousand (4,000). Vessels loading cargo quantities in excess of 500,000 barrels shall be allowed berth time of 36 hours plus 1 hour for each 20,000 barrels to be loaded in excess of 500,000 barrels. Conditions of this provision excepted, however, the vessel shall not remain at berth more than 6 hours after completion of cargo loading unless hampered by tide or weather.

(1) Berth time shall commence with the vessel's first line ashore and shall continue until loading of the vessel, or vessels in case more than one vessel is loaded, is completed and the last line is off. In addition, allowable berth time will be increased by the amount of any delay occurring subsequent to the commencement of berth time and resulting from causes due to adverse weather, labor disputes, force majeure and the like, decisions made by port authorities affecting loading operations, actions of DOE, its contractors and agents resulting in delay of loading operations (providing this action does not arise through the fault of the purchaser or purchaser's agent), and customs and immigration clearance. The time required by the vessel to discharge oily

wastes or to moor multiple vessels sequentially into berth shall count as used berth time.

(2) For all hours of berth time used by the vessel in excess of allowable berth time as provided for in this provision, the purchaser shall be liable for dock demurrage and also shall be subject to the conditions of Provision C.11.

C.9 Vessel Laytime and Demurrage

(a) The laytime allowed DOE for handling of the purchaser's vessel shall be 36 running hours. For vessels with cargo quantities in excess of 500,000 barrels, laytime shall be 36 running hours plus 1 hour for each 20,000 barrels of cargo to be loaded in excess of 500,000 barrels. Vessel laytime shall commence when the vessel is moored alongside (all fast) the loading berth or 6 hours after receipt of a Notice of Readiness, whichever occurs first. It shall continue 24 hours per day, seven days per week without interruption from its commencement until loading of the vessel is completed and cargo hoses or loading arms are disconnected. Any delay to the vessel in reaching berth caused by the fault or negligence of the vessel or purchaser, delay due to breakdown or inability of the vessel's facilities to load, decisions made by vessel owners or operators or by port authorities affecting loading operations, discharge of ballast or slops, customs and immigration clearance, weather, labor disputes, force majeure and the like shall not count as used laytime. In addition, movement in roads shall not count as used laytime.

(b) If the vessel is tendered for loading on a date earlier than the firm agreed-upon arrival date, established in accordance with Provision C.8, and other vessels are loading or have already been scheduled for loading prior to the purchaser's vessel, the purchaser's vessel shall await its turn and vessel laytime shall not commence until the vessel moors alongside (all fast), or at 0600 hours local time on the firm agreed-upon date of arrival, whichever occurs first. If the vessel is tendered for loading later than 2400 hours on the firm agreed-upon date of arrival, DOE will use its best efforts to have the vessel loaded as soon as possible in its proper turn with other scheduled vessels, under the circumstances prevailing at the time. In such instances, vessel laytime shall commence when the vessel moors alongside (all fast).

(c) For all hours or any part thereof of vessel laytime that elapse in excess of the allowed vessel laytime for loading provided for in this provision, demurrage shall be paid by DOE, for U.S.-flag vessels, at the lesser of the demurrage rate in the tanker voyage or charter party agreement, or the most recently available United States Freight Rate Average (USFRA) for a hypothetical tanker with a deadweight in long tons equal to the weight in long tons of the petroleum loaded, multiplied by the most recent edition of the American Tanker Rate Schedule rate for such hypothetical tanker and voyage. For foreign flag vessels, demurrage shall be as determined in this provision, except that the London Tanker Brokers' Panel Average Freight Rate Assessment (AFRA) and most recent edition of the New Worldwide Tanker

Nominal Freight Scale "Worldscale" shall be used as appropriate, if less than the charter party rate. For all foreign flag vessel loadings that commence during a particular calendar month, the applicable AFRA shall be the one that is determined on the basis of freight assessments for the period ended on the 15th day of the preceding month. The demurrage rate for barges will be the lesser of the hourly rate contained in the charter of a chartered barge, or a rate determined by DOE as a fair rate under prevailing conditions. If demurrage is incurred because of breakdown of machinery or equipment of DOE or its contractors (other than the purchaser), the rate of demurrage shall be reduced to one-half the rate stipulated herein per running hour and pro rata of such reduced rate for part of an hour for demurrage so incurred. Demurrage payable by DOE, however, shall in no event exceed the actual demurrage expense incurred by the purchaser as the result of the delay.

(d) In the event the purchaser is using more than one vessel to load the contract quantity scheduled to be delivered during a single loading window, the terms of this provision and the Government's liability for demurrage apply only to the first vessel presenting its Notice of Readiness in accordance with (a) of this provision.

(e) The primary source document and official record for demurrage calculations is the SPRCODR (see Provision C.19).

C.10 Vessel Loading Expedition Options

(a) Notwithstanding Provision C.8(j)(1), in order to avoid disruption in the SPR distribution process, the Government may limit berthing time for any vessel receiving SPR petroleum to that period required for loading operations and the physical berthing/unberthing of the vessel. At the direction of the Government, activities not associated with the physical loading of the vessel (e.g., preparing documentation, gauging, sampling, etc.) may be required to be accomplished away from the berth. Time consumed by these activities will not be for the Government's account. If berthing time is to be restricted, the Government will so advise the vessel prior to berthing of the vessel.

(b) In addition to paragraph (a) of this provision, the Government may limit vessels calling at SPR terminals to a total of 24 hours for petroleum transfer operations. In such an event, the loading will be considered completed if the vessel has loaded 95 percent or more of the nominated quantity within a total of 24 hours. If the vessel has loaded less than 95 percent of its nominated quantity, then Provision C.11 shall apply.

C.11 Purchaser Liability for Excessive Berth Time

The Government reserves the right to direct a vessel loading SPR petroleum at a delivery point specified in the NS, to vacate its SPR berth, and absorb all costs associated with this movement, should such vessel, through its operational inability to receive oil at the average rates provided for in Provision C.8, cause the berth to be unavailable for an already scheduled follow-on vessel. Furthermore, should a breakdown of the vessel's propulsion system prevent its getting under way on its own power, the

Government may cause the vessel to be removed from the berth with all costs to be borne by the purchaser.

C.12 Pipeline Delivery Procedures

(a) The purchaser shall nominate his delivery requirements to the pipeline carrier, to include the total quantity to be moved and his preferred five-day shipment range(s) as specified in C.5. The purchaser shall provide confirmation of the carrier's acceptance of the nominated quantity (in thousands of barrels per day) and shipment ranges to the SPR/PMO no later than the last day of the month preceding the month of delivery. The purchaser shall also furnish the SPR/PMO with the name, telephone number, and e-mail address of the pipeline point of contact with whom the SPR/PMO should coordinate the delivery.

(b) The SPR/PMO will ensure oil is made available to the carrier within the shipment date range(s) established in accordance with Provision C.5. Once established, the pipeline delivery schedule can only be changed with SPR/PMO's prior written consent. Should the schedule established in accordance with (a) of this provision vary from the original schedule established in accordance with Provision C.5, the Government will provide its best efforts to accommodate this revised schedule but will incur no liability for failure to provide delivery on the dates requested.

(c) Three days prior to the beginning of any five-day shipping range in which the purchaser is to receive delivery, the purchaser shall furnish the SPR/PMO the firm date within that range on which the movement is to commence, the quantity to be moved, and the contract number.

(d) The date of delivery, which will be recorded on the CODR (see Provision C.19), is the date delivery commenced to the custody transfer point, as identified in the NS.

(e) The purchaser shall receive pipeline deliveries at a minimum average rate of 100,000 barrels per day. The purchaser is solely responsible for making the necessary arrangements with pipeline carriers, including storage, to achieve the stated minimum.

C.13 Title and Risk of Loss

Unless otherwise provided in the NS, title to and risk of loss for SPR petroleum will pass to the purchaser at the delivery point as follows:

(a) For vessel shipment—when the petroleum passes from the dock loading equipment connections to the vessel's permanent hose connection.

(b) For pipeline shipment—as identified in the NS.

C.14 Acceptance of Crude Oil

(a) When practical, the NS shall update the SPR crude oil stream characteristics shown in *Exhibit A*, SPR Crude Oil Comprehensive Analysis. However, the purchaser shall accept the crude oil delivered regardless of characteristics. Except as provided in this provision, DOE assumes no responsibility for deviations in quality.

(b) In the event that the crude oil stream delivered both has a total sulfur content (by weight) in excess of 2.0 percent if a sour

crude oil stream, or 0.50 percent if a sweet crude oil stream, and, in addition, has an API gravity less than 28°API if a sour crude oil stream, or 32°API if a sweet crude oil stream, the purchaser shall accept the crude oil delivered and either pay the contract price adjusted in accordance with Provision C.16, or request negotiation of the contract price. Unless the purchaser submits a written request for negotiation of the contract price to the Contracting Officer within 10 days from the date of invoice, the purchaser shall be deemed to have accepted the adjustment of the price in accordance with Provision C.16. Should the purchaser request a negotiation of the price and the parties be unable to agree as to that price, the dispute shall be settled in accordance with Provision C.32.

C.15 Delivery Acceptance and Verification

(a) The purchaser shall provide written confirmation to SPR/PMO, no later than 72 hours prior to the scheduled date of the first delivery under the contract, the name(s) of the authorized agent(s) given signature authority to sign/endorse the delivery documentation (CODR, etc.) on the purchaser's behalf. Any changes to this listing of names must be provided to the SPR/PMO in writing no later than 72 hours before the first delivery to which such change applies. In the event that an independent surveyor (separate from the authorized signatory agent) is appointed by the purchaser to witness the delivery operation (gauging, sampling, testing, etc.), written notification must be provided to SPR/PMO, no later than 72 hours prior to the scheduled date of each applicable cargo delivery.

(b) Absence of the provision of the name(s) of bona fide agent(s) and the signature of such agent on the delivery documentation constitutes acceptance of the delivery quantity and quality as determined by DOE and/or its agents.

C.16 Price Adjustments for Quality Differentials

(a) The NS will specify quality price adjustments applicable to the crude oil streams offered for sale. Unless otherwise specified by the NS, quality price adjustments will be applied only to the amount of variation by which the API gravity of the crude oil delivered differs by more than plus or minus five-tenths of one degree API (+/-0.5°API) from the API gravity of the crude oil stream contracted for as published in the NS.

(b) Price adjustments for SPR crude oil are expected to be similar to one or more commercial crude oil postings for equivalent quality crude oil. The contract price per barrel shall be increased by that amount if the API gravity of the crude oil delivered exceeds the published API gravity by more than 0.5°API and decreased by that amount if the API gravity of the crude oil delivered falls below the published API gravity by more than 0.5°API.

C.17 Determination of Quality

(a) The quality of the crude oil delivered to the purchaser will be determined from samples taken from the delivery tanks in accordance with API Manual of Petroleum

Measurement Standards, Chapter 8.1, Manual Sampling of Petroleum and Petroleum Products (ASTM D4057), latest edition; or from a representative sample collected by an automatic sampler whose performance has been proven in accordance with the API Manual of Petroleum Measurement Standards, Chapter 8.2, Automatic Sampling of Petroleum and Petroleum Products (ASTM D4177), latest edition. Preference will be given to samples collected by means of an automatic sampler when such a system is available and operational. Tests to be performed by DOE or its authorized contractor are:

(1) Sediment and Water

Primary methods: API Manual of Petroleum Measurement Standards, Chapter 10.1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method (ASTM D473) (IP53), latest edition; or API Manual of Petroleum Measurement Standards, Chapter 10.8, Sediment in Crude Oil by Membrane Filtration (ASTM D4807), latest edition; and API Manual of Petroleum Measurement Standards, Chapter 10.2, Determination of Water in Crude Oil by Distillation (ASTM D4006) (IP358), latest edition; or API Manual of Petroleum Measurement Standards, Chapter 10.9, Water in Crude Oil by Coulometric Karl Fischer Titration (ASTM D4928) (IP 386), latest edition.

Alternate methods: API Manual of Petroleum Measurement Standards, Chapter 10.3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure) (ASTM D4007) (IP 359), latest edition.

(2) Sulfur

Primary method: ASTM D4294, Sulfur in Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry, latest edition.

Alternate method: ASTM D2622, Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry.

(3) API Gravity

Primary methods: API Manual of Petroleum Measurement Standards, Chapter 9.1, Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method (ASTM D1298) (IP 160), latest edition; or Density and Relative Density of Crude Oils by Digital Density Analyzer (ASTM D5002), latest edition.

Alternate method: API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method) (ASTM D287), latest edition.

To the maximum extent practicable, the primary methods will be used for determination of SPR crude oil quality characteristics. However, because of conditions prevailing at the time of delivery, it may be necessary to use alternate methods of test for one or more of the quality characteristics. The Government's test results will be binding in any dispute over quality characteristics of SPR petroleum.

(b) The purchaser or his representative may arrange to witness and verify testing simultaneously with the U.S. government

representative. Such services, however, will be for the account of the purchaser. Any disputes will be settled in accordance with Provision C.32. Should the purchaser opt not to witness the testing, then the Government findings will be binding on the purchaser.

C.18 Determination of Quantity

(a) The quantity of crude oil delivered to the purchaser will be determined by opening and closing tank gauges with adjustment for opening and closing free water and sediment and water as determined from shore tank samples where an automatic sampler is not available, or delivery meter reports. All volumetric measurements will be corrected to net standard volume in barrels at 60 °F, using the API Manual of Petroleum Measurement Standards, Chapter 11.1, Volume 1, Volume Correction Factors (ASTM D1250) (IP 200); Table 5A—Generalized Crude Oils, Correction of Observed API Gravity to API Gravity at 60 °F; Table 6A—Generalized Crude Oils, Correction of Volume to 60 °F Against API Gravity at 60 °F, latest edition, and by deducting the tanks' free water, and the entrained sediment and water as determined by the testing of composite all-levels samples taken from the delivery tanks; or by deducting the sediment and water as determined by testing a representative portion of the sample collected by a certified automatic sampler, and also corrected by the applicable pressure correction factor and meter factor.

(b) The quantity measurements shall be performed and certified by the DOE contractor responsible for delivery operations, and witnessed by the U.S. government representative at the delivery point. The purchaser shall have the right to have representatives present at the gauging/metering, sampling, and testing. Should the purchaser arrange for additional inspection services, such services will be for the account of the purchaser. Any disputes shall be settled in accordance with Provision C.32. Should the purchaser not arrange for additional services, then DOE's quantity determination shall be binding on the purchaser.

C.19 Delivery Documentation

The quantity and quality determination shall be documented on the SPR/PMO Crude Oil Delivery Report (SPRCODR), SPRPMO-F-6110.2-14b (Rev 8/91) (see *Exhibit E* for copy of this form). The SPRCODR will be signed by the purchaser's agent to acknowledge receipt of the quantity and quality of crude oil indicated. In addition, for vessel deliveries, the time statement on the SPRCODR will be signed by the vessel's Master when loading is complete. Copies of the completed SPRCODR, with applicable supporting documentation (i.e., metering or tank gauging tickets and appropriate calculation worksheets), will be furnished to the purchaser and/or the purchaser's authorized representative after completion of delivery. They will serve as the basis for invoicing and/or reconciliation invoicing for the sale of petroleum as well as for any associated services that may be provided.

C.20 Contract Amounts

The contract quantities and dollar value stated in the NA are estimates. The per barrel

unit price is subject to adjustment due to variation in the API gravity from the published characteristics, changes in delivery mode and price index values, if applicable. In addition, due to conditions of vessel loading and shipping or pipeline transmission, the quantity actually delivered may vary by ± 10 percent for each shipment. However, a purchaser is not required to engage additional transportation capacity if sufficient capacity to take delivery of at least 90 percent of the contract quantity has been engaged.

C.21 Payment and Performance Letter of Credit

(a) Within five business days of receipt of notification of Apparently Successful Offeror, the Purchaser must provide to the Contracting Officer an "Irrevocable Standby Letter of Credit" established in favor of the United States Department of Energy equal to 100 percent of the contract awarded value and containing the substantive provisions set out in *Exhibit D*. The purchaser must furnish an acceptable letter of credit before DOE will execute the NA. The letter of credit MUST NOT VARY IN SUBSTANCE from the sample at *Exhibit D*. If the letter of credit contains any provisions at variance with *Exhibit D* or fails to include any provisions contained in *Exhibit D*, nonconforming provisions must be deleted and missing substantive provisions must be added or the letter of credit will not be accepted. The letter of credit must be effective on or before the first delivery under the contract and remain in effect for a period of 120 days, must permit multiple partial drawings, and must contain the contract number. The original of the letter of credit must be sent to the Contracting Officer.

(b) The letter of credit must be issued by a depository institution located in and authorized to do business in any state of the United States or the District of Columbia, and authorized to issue letters of credit by the banking laws of the United States or any state of the United States or the District of Columbia. The depository institution must be an account holder with the Federal Reserve Banking system and a participant (on-line) in the Fed's Fedwire Deposit System Network funds transfer system. The issuing bank must provide documentation indicating that the person signing the letter of credit is authorized to do so, in the form of corporate minutes, the Authorized Signature List, or the General Resolution of Signature Authority.

(c) All letter of credit costs will be borne by the purchaser.

(d) The letter of credit must be maintained at 100 percent of the contract value of the petroleum remaining to be delivered as well as delivered quantities for which payment has not been remitted, plus any other charges owed to the Government under the contract. In the event the letter of credit falls below the level specified, or at the discretion of the Contracting Officer must be increased because of the effect of the price indexing mechanism provided for in Provision B.2, DOE reserves the right to demand the purchaser modify the letter of credit to a level deemed sufficient by the Contracting Officer. The purchaser shall make such modification within two business days of

being notified by the Contracting Officer by express mail or electronic means. The purchaser is deemed to have received such notification the next business day after its dispatch. If such modification is not made within two days after purchaser is deemed to have received the notice, the Contracting Officer may, on the 3rd business day, without prior notice to the purchaser, withhold deliveries in whole or in part under the contract and/or terminate the contract in whole or in part under Provision C.25.

(e) Within 30 calendar days after final payment under the contract, the Contracting Officer shall authorize the cancellation of the letter of credit and shall return it to the bank or financial institution issuing the letter of credit. A copy of the notice of cancellation will be provided to the purchaser.

C.22 Billing and Payment

(a) The Government will invoice the Purchaser at the conclusion of each delivery.

(b) Payment is due in full on the 20th of the month following each delivery month. Should the 20th of the month fall on a Saturday, Sunday, or Federal holiday, payment will be due and payable in full on the last business day preceding the 20th of the month.

(c) If an invoice is not paid in full, the Government may provide the Purchaser oral or written notification that Purchaser is delinquent in its payments; draw against the letter of credit for all quantities for which unpaid invoices are outstanding; withhold all or any part of future deliveries under the contract; and/or terminate the contract, in whole or in part, in accordance with Provision C.25.

(d) In the event that the bank refuses to honor the draft against the letter of credit, the purchaser shall be responsible for paying the principal and any interest due (see Provision C.24) from the due date.

C.23 Method of Payments

(a) All amounts payable by the purchaser shall be paid by either:

(1) Deposit to the account of the U.S. Treasury by wire transfer of funds over the Fedwire Deposit System Network. The information to be included in each wire transfer will be provided in the NS.

(2) Electronic funds transfer through the Automated Clearing House (ACH) network, using the Federal Remittance Express Program. The information to be included in each transfer will be provided in the NS.

All wire deposit electronic funds transfer costs will be borne by the purchaser.

(b) If the purchaser disagrees with the amounts invoiced by the Government, the purchaser shall immediately pay the amount invoiced, and notify the Contracting Officer of the basis for its disagreement. The Contracting Officer will receive and act upon any such objection. Failure to agree to any adjustment shall be a dispute, and a purchaser shall file a claim promptly in accordance with Provision C.32.

(c) DOE may designate another place, different timing, or another method of payment after reasonable written notice to the purchaser.

(d) Notwithstanding any other contract provision, DOE may via a draft message

request a wire transfer of funds against the standby letter of credit at any time for payment of monies due under the contract and remaining unpaid in violation of the terms of the contract. These would include but not be limited to interest, liquidated damages, demurrage, amounts owing for any services provided under the contract, and the difference between the contract price and price received on the resale of undelivered petroleum as defined in Provision C.25. If the invoice is for delinquent payments, interest shall accrue from the payment due date.

(e) No payment due DOE hereunder shall be subject to reduction or set-off for any claim of any kind against the United States arising independently of the contract.

C.24 Interest

(a) Amounts due and payable by the purchaser or its bank that are not paid in accordance with the provisions governing such payments shall bear interest from the date due until the date payment is received by the Government.

(b) Interest shall be computed on a daily basis. The interest rate shall be in accordance with the Current Value of Funds rate as established by the Department of the Treasury in accordance with the Debt Collection Improvement Act of 1997 and published periodically in Bulletins to the Treasury Fiscal Requirements Manual and in the **Federal Register**.

C.25 Termination

(a) Immediate termination.

(1) The Contracting Officer may terminate this contract in whole or in part, without liability of DOE, by written notice to the purchaser effective upon its being deposited in the U.S. Postal System addressed to the purchaser as provided in Provision C.31 in the event that the purchaser either notifies the Contracting Officer that it will not be able to accept, or fails to accept, any delivery line item in accordance with the terms of the contract. Such notice shall invite the purchaser to submit information to the Contracting Officer as to the reasons for the failure to accept the delivery line item in accordance with the terms of the contract.

(2) Within 10 business days after the issuance of the notice of termination, the Contracting Officer may determine that such termination was a termination for default under paragraph (b)(1)(ii) of this provision. In the absence of information which persuades the Contracting Officer that the purchaser's failure to accept the delivery line item was excusable, the fact of such failure may be the basis for the Contracting Officer determining the purchaser to be in default, without first determining under paragraphs (b)(2) and (b)(3) whether such failure was excusable under the terms of the contract. The Contracting Officer shall promptly give the purchaser written notice of such determination.

(3) Any immediate termination other than one determined to be a termination for default in accordance with paragraph (a)(2) and paragraph (b) of this provision shall be a termination for the convenience of DOE without liability of the Government.

(b) Termination for Default.

(1) Subject to the provisions of paragraphs (b)(2) and (b)(3), the Contracting Officer may

terminate the contract in whole or in part for purchaser default, without liability of DOE, by written notice to the purchaser, effective upon its being deposited in the U.S. Postal System, addressed to the purchaser as provided in Provision C.31 in the event that:

(i) The Government does not receive payment in accordance with any payment provision of the contract;

(ii) The purchaser fails to accept delivery of petroleum in accordance with the terms of the contract; or

(iii) The purchaser fails to comply with any other term or condition of the contract within 5 business days after the purchaser is deemed to have received written notice of such failure from the Contracting Officer.

(2) Except with respect to defaults of subcontractors, the purchaser shall not be determined to be in default or be charged with any liability to DOE under circumstances which prevent the purchaser's acceptance of delivery hereunder due to causes beyond the control and without the fault or negligence of the purchaser as determined by the Contracting Officer. Such causes shall include but are not limited to:

(i) Acts of God or the public enemy;

(ii) Acts of the Government acting in its sovereign or contractual capacity;

(iii) Fires, floods, earthquakes, explosions, unusually severe weather, or other catastrophes; or

(iv) Strikes.

(3) If the failure to perform is caused by the default of a subcontractor, the purchaser shall not be determined to be in default or to be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the purchaser to meet the delivery schedule, if:

(i) Such default arises out of causes beyond the control of the purchaser and its subcontractor, and without the fault or negligence of either of them; or

(ii) Such default arises out of causes within the control of a transportation subcontractor, not an affiliate of the purchaser, hired to transport the purchaser's petroleum by vessel or pipeline, and such causes are beyond the purchaser's control, without the fault or negligence of the purchaser, and notwithstanding the best efforts of the purchaser to avoid default.

(4) In the event that the contract is terminated in whole or in part for default, the purchaser shall be liable to DOE for:

(i) The difference between the contract price on the contract termination date and any lesser price the Contracting Officer obtained upon resale of the petroleum; and

(ii) Liquidated damages as specified in Provision C.27 as fixed, agreed, liquidated damages for each day of delay until the petroleum is delivered to a purchaser under either a resolicitation for the sale of the quantities of oil defaulted on, or an NS issued after the date of default that specifies that it is for the sale of quantities of oil defaulted on. In no event shall liquidated damages be assessed for more than 30 days.

(5) In the event that the Government exercises its right of termination for default, and it is later determined that the purchaser's

failure to perform was excused in accordance with paragraphs (2) and (3), the rights and obligations of the parties shall be the same as if such termination was a termination for convenience without liability of the Government under paragraph (c).

(c) Termination for convenience.

(1) In addition to any other right or remedy provided for in the contract, the Government may terminate this contract at any time in whole or in part whenever the Contracting Officer shall determine that such termination is in the best interest of the Government.

Such termination shall be without liability of the Government if such termination arises out of causes specified in paragraphs (a)(1) or (b)(1) of this provision, acts of the Government in its sovereign capacity, or causes beyond the control and without the fault or negligence of the Government, its contractors (other than the purchaser of SPR crude oil under this contract) and agents. For any other termination for convenience, the Government shall be liable for such reasonable costs incurred by the purchaser in preparing to perform the contract, but under no circumstances shall the Government be liable for consequential damages or lost profits as the result of such termination.

(2) The purchaser will be given immediate written notice of any decrease of petroleum deliveries greater than 10 percent, or of termination, under this paragraph (c). The termination or reduction shall be effective upon its notice being deposited in the U.S. Postal System unless otherwise specified in the notice. The purchaser is deemed to have received a mailed notice on the second day after its dispatch and an electronic or express mail notice on the day after dispatch.

(3) Termination for the convenience of the Government shall not excuse the purchaser from liquidated damages accruing prior to the effective date of the termination.

(d) Nothing herein contained shall limit the Government in the enforcement of any legal or equitable remedy that it might otherwise have, and a waiver of any particular cause for termination shall not prevent termination for the same cause occurring at any other time or for any other cause.

(e) In the event that the Government exercises its right of termination, as provided in paragraphs (a), (b), or (c)(1) of this provision, the Contracting Officer may sell any undelivered petroleum under such terms and conditions as he deems appropriate.

(f) DOE's ability to deliver petroleum on the date on which the defaulted purchaser was scheduled to accept delivery, under another contract awarded prior to the date of the contractor's default, shall not excuse a purchaser that has been terminated for default from either liquidated damages or the difference between the contract price and any lesser price obtained on resale.

(g) Any disagreement with respect to the amount due the Government for either resale costs or liquidated damages shall be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision C.32.

(h) The term "subcontractor" or "subcontractors" includes subcontractors at any tier.

C.26 Other Government Remedies

(a) The Government's rights under this provision are in addition to any other right or remedy available to it by law or by virtue of this contract.

(b) The Government may, without liability on its part, withhold deliveries of petroleum under this contract or any other contract the purchaser may have with DOE if payment is not made in accordance with this contract.

(c) If the purchaser fails to take delivery of petroleum in accordance with the delivery schedule developed under the terms of the contract, and such tardiness is not excused under the terms of Provision C.25, but the Government does not elect to terminate that item for default, the purchaser nonetheless shall be liable to the Government for liquidated damages in the amount established by Provision C.27 for each calendar day of delay or fraction thereof until such time as it accepts delivery of the petroleum. In no event shall such damages be assessed for longer than 30 days. No purchaser that fails to perform in accordance with the terms of the contract shall be excused from liability for liquidated damages by virtue of the fact that DOE is able to deliver petroleum on the date on which the non-performing purchaser was scheduled to accept delivery, under another contract awarded prior to the date of default.

C.27 Liquidated Damages

(a) In case of failure on the part of the purchaser to perform within the time fixed in the contract or any extension thereof, the purchaser shall pay to the Government liquidated damages in the amount of 1 percent of the contract price of the undelivered petroleum per calendar day of delay or fraction thereof in accordance with Provision C.25(b) and Provision C.26(c).

(b) As provided in (a) of this provision, liquidated damages will be assessed for each day or fraction thereof a purchaser is late in accepting delivery of petroleum in accordance with this contract, unless such tardiness is excused under Provision C.25. For petroleum to be lifted by vessel, damages will be assessed in the event that the vessel has not commenced loading by 11:59 p.m. on the second day following the last day of the 3-day delivery window established under Provision C.5, unless the vessel has arrived in roads and its Master has presented a notice of readiness to the Government or its agents. Liquidated damages shall continue until the vessel presents its notice of readiness. For petroleum to be moved by pipeline, if delivery arrangements have not been made by the last day of the month prior to delivery, liquidated damages shall commence on the 3rd day of the delivery month until such delivery arrangements are completed; if delivery arrangements have been made, then liquidated damages shall begin on the 3rd day after the scheduled delivery date if delivery is not commenced and shall continue until delivery is commenced.

(c) Any disagreement with respect to the amount of liquidated damages due the Government will be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision C.32.

C.28 Failure To Perform Under SPR Contracts

In addition to the usual debarment procedures, 10 CFR 625.3 provides procedures to make purchasers that fail to perform in accordance with these provisions ineligible for future SPR contracts.

C.29 Government Options in Case of Impossibility of Performance

(a) In the event that DOE is unable to deliver petroleum contracted for to the purchaser due either to events beyond the control of the Government, including actions of the purchaser, or to acts of the Government, its agents, its contractors or subcontractors at any tier, the Government at its option may do either of the following:

(1) Terminate for the convenience of the Government under Provision C.25; or
(2) Offer different SPR crude oil streams or delivery times to the purchaser in substitution for those specified in the contract.

(b) In the event that a different SPR crude oil stream than originally contracted for is offered to the purchaser, the contract price will be negotiated between the parties. In no event shall the negotiated price be less than the minimum acceptable price established for the same or similar crude oil streams at the time of contract award.

(c) DOE's obligation in such circumstances is to use its best efforts, and DOE under no circumstances shall be liable to the purchaser for damages arising from DOE's failure to offer alternate SPR crude oil streams or delivery times.

(d) If the parties are unable to reach agreement as to price, crude oil streams or delivery times, DOE may terminate the contract for the convenience of the Government under Provision C.25.

C.30 Limitation of Government liability

DOE's obligation under these SSPs and any resultant contract is to use its best efforts to perform in accordance therewith. The Government under no circumstances shall be liable thereunder to the purchaser for the conduct of the Government's contractors or subcontractors or for indirect, consequential, or special damages arising from its conduct, except as provided herein; neither shall the Government be liable thereunder to the purchaser for any damages due in whole or in part to causes beyond the control and without the fault or negligence of the Government, including but not restricted to, acts of God or public enemy, acts of the Government acting in its sovereign capacity, fires, floods, earthquakes, explosions, unusually severe weather, other catastrophes, or strikes.

C.31 Notices

(a) Any notices required to be given by one party to the contract to the other in writing shall be forwarded to the addressee, prepaid, by U.S. registered, return receipt requested mail, express mail, or electronic means as provided in the NS. Parties shall give each other written notice of address changes.

(b) Notices to the purchaser shall be forwarded to the purchaser's address as it appears in the offer and in the contract.

(c) Notices to the Contracting Officer shall be forwarded to the following address: U.S.

Department of Energy, Strategic Petroleum Reserve, Project Management Office, Acquisition and Sales Division, Mail Stop FE-4451, 900 Commerce Road East, New Orleans, Louisiana 70123.

C.32 Disputes

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*). If a dispute arises relating to the contract, the purchaser may submit a claim to the Contracting Officer, who shall issue a written decision on the dispute in the manner specified in 48 CFR 1-33.211.

(b) "Claim" means:

(1) A written request submitted to the Contracting Officer;

(2) For payment of money, adjustment of contract terms, or other relief;

(3) Which is in dispute or remains unresolved after a reasonable time for its review and disposition by the Government; and

(4) For which a Contracting Officer's decision is demanded.

(c) In the case of dispute requests or amendments to such requests for payment exceeding \$50,000, the purchaser shall certify at the time of submission as a claim, as follows:

I certify that the claim is made in good faith, that the supporting data are current, accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the contract adjustment for which the purchaser believes the Government is liable.

Purchaser's Name

Signature

Title

(d) The Government shall pay to the purchaser interest on the amount found due to the purchaser on claims submitted under this provision at the rate established by the Department of the Treasury from the date the amount is due until the Government makes payment. The Contract Disputes Act of 1978 and the Prompt Payment Act adopt the interest rate established by the Secretary of the Treasury under the Renegotiation Act as the basis for computing interest on money owed by the Government. This rate is published semi-annually in the **Federal Register**.

(e) The purchaser shall pay to DOE interest on the amount found due to the Government and unpaid on claims submitted under this provision at the rate specified in Provision C.24 from the date the amount is due until the purchaser makes payment.

(f) The decision of the Contracting Officer shall be final and conclusive and shall not be subject to review by any forum, tribunal, or Government agency unless an appeal or action is commenced within the times specified by the Contract Disputes Act of 1978.

(g) The purchaser shall comply with any decision of the Contracting Officer and at the direction of the Contracting Officer shall proceed diligently with performance of this contract pending final resolution of any request for relief, claim, appeal, or action related to this contract.

C.33 Assignment

The purchaser shall not make or attempt to make any assignment of a contract that incorporates these SSPs or any interest therein contrary to the provisions of Federal law, including the Anti-Assignment Act (41 U.S.C. 15), which provides:

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States is concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

C.34 Order of Precedence

In the event of an inconsistency between the terms of the various parts of this contract, the inconsistency shall be resolved by giving precedence in the following order:

- (a) The NA and written modifications thereto;
- (b) The NS;
- (c) Those provisions of the SSPs made applicable to the contract by the NS;
- (d) Instructions provided in the Crude Oil Sales Offer Program; and
- (e) The successful offer.

C.35 Gratuities

(a) The Government, by written notice to the purchaser, may terminate the right of the purchaser to proceed under this contract if it is found, after notice and hearing, by the Secretary of Energy or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered by or given by the purchaser, or any agent or representative of the purchaser, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the Secretary of Energy or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event that this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (1) to pursue the same remedies against the purchaser as it could pursue in the event of a breach of the contract by purchaser, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of Energy or his duly authorized representative) which shall not be less than three nor more than 10 times the cost incurred by the purchaser in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Exhibits:

- A—SPR Crude Oil Comprehensive Analysis
B—SPR Delivery Point Data

C—Offer Standby Letter of Credit

D—Payment and Performance Letter of Credit

E—Strategic Petroleum Reserve Crude Oil Delivery Report—SPRPMO-F-6110.2-14b 1/87 REV. 8/91

EXHIBIT B—SPR DELIVERY POINT DATA**SEAWAY FREEPORT TERMINAL**

(Formerly Phillips Terminal)

LOCATION: Brazoria County, Texas (three miles southwest of Freeport, Texas on the Old Brazos River, four miles from the sea buoy)

CRUDE OIL STREAMS: Bryan Mound Sweet and Bryan Mound Sour.

DELIVERY POINTS: Seaway Terminal marine dock facility number 2.

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 2 Docks: Nos. 2 and 3.

MAXIMUM LENGTH

OVERALL (LOA): Docks 2 and 3—820 feet (up to 900 feet with pilot approval) during daylight and 615 feet during hours of darkness.

MAXIMUM BEAM: Docks 2 and 3—145 feet.

MAXIMUM DRAFT: Docks 2 and 3—42 feet salt water; subject to change due to weather and silting conditions.

MAXIMUM AIR DRAFT: None.

MAXIMUM DEADWEIGHT TONS (DWT):

Dock Nos. 2 and 3 can accommodate up to 120,000 DWT if they meet other port restrictions. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: None.

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.

CUSTOMARY ANCHORAGE: Freeport Harbor sea-buoy approximately 4.5 miles from the terminal.

SEAWAY TEXAS CITY TERMINAL
(Formerly ARCO Texas City)

LOCATION: Docks 11 and 12, Texas City Harbor, Galveston County, Texas.

CRUDE OIL STREAMS: Bryan Mound Sweet and Bryan Mound Sour.

DELIVERY POINTS: Marine Docks (11 and 12) and connections to local commercial pipelines.

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 2 Docks: Nos. 11 and 12.

MAXIMUM LENGTH

OVERALL (LOA): 1,020 feet. Maximum bow to manifold centerline distance is 468 feet.

MAXIMUM BEAM: Dock 11—180 feet; Dock 12—220 feet.

MAXIMUM DRAFT: 39.5 feet brackish water; subject to change due to weather and silting conditions.

MAXIMUM AIR DRAFT: None.

MAXIMUM DEADWEIGHT TONS (DWT):

150,000 DWT each. Terminal permission is required for less than 30,000 DWT or greater than 150,000 DWT. Vessels larger than 120,000 DWT are restricted to daylight transit. Purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: None.

OILY WASTE RECEPTION FACILITIES:

Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing all costs associated with such arrangements.

CUSTOMARY ANCHORAGE: Bolivar Roads (breakwater) or Galveston sea-buoy.

SUNOCO LOGISTICS TERMINAL

LOCATION: Nederland, Texas (on the Neches River at Smiths Bluff in southwest Texas, 47.6 nautical miles from the bar).

CRUDE OIL STREAMS: West Hackberry Sweet and West Hackberry Sour.

DELIVERY POINTS: Sun Terminal marine dock facility and Sun Terminal connections to local commercial pipelines.

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 5 Docks: Nos. 1, 2, 3, 4 and 5.

MAXIMUM LENGTH

OVERALL (LOA): 1000 feet.

MAXIMUM BEAM: 150 feet.

MAXIMUM DRAFT: 40 feet fresh water.

MAXIMUM AIR DRAFT: 136 feet.

MAXIMUM DEADWEIGHT TONS (DWT):

Maximum DWT at Dock No. 1 is 85,000 DWT. Dock Nos. 2, 3, 4 and 5 can accommodate up to 150,000 DWT. Vessels larger than 85,000 DWT, 875 feet LOA, or 125 feet beam are restricted to daylight transit. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: 3 Barge Docks: A, B and C. Each is capable of handling barges up to 25,000 barrels capacity.

OILY WASTE RECEPTION FACILITIES:

Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.

CUSTOMARY ANCHORAGE: South of Sabine Bar-Buoy. There is an additional anchorage at the Sabine Bar for vessels with draft of 39 feet or less.

SHELL 22-INCH/DOE LAKE CHARLES PIPELINE CONNECTION

LOCATION: Lake Charles Upper Junction, located in Section 36, Township 10 South, Range 10 West, Calcasieu Parish, (Lake Charles) Louisiana.

CRUDE OIL STREAMS: West Hackberry Sweet and West Hackberry Sour.

DELIVERY POINT: Shell 22-Inch/DOE Lake Charles Pipeline Connection.
MARINE DISTRIBUTION FACILITIES: None.

SHELL SUGARLAND TERMINAL

LOCATION: St. James Parish, Louisiana (30 miles southwest of Baton Rouge on the west bank of the Mississippi River at mile-marker 158.3).

CRUDE OIL STREAMS: Bayou Choctaw Sweet and Bayou Choctaw Sour.

DELIVERY POINTS: Sugarland Terminal marine dock facility and LOCAP and Capline Terminals (connections to Capline interstate pipeline system and local commercial pipelines).

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 2 Docks: Nos. 1 and 2.
MAXIMUM LENGTH

OVERALL (LOA): 940 feet.
MAXIMUM BEAM: None.
MAXIMUM DRAFT: 45 feet fresh water.
MAXIMUM AIR DRAFT: 153 feet less the river stage.

MAXIMUM DEADWEIGHT TONS (DWT): 100,000 DWT. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: Dock 1.
OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements and for bearing all costs associated with such arrangements. Terminal can provide suitable contacts.

CUSTOMARY ANCHORAGE: Grandview Reach approximately 11 miles from the terminal.

UNOCAL BEAUMONT TERMINAL

LOCATION: Beaumont Terminal, located downstream south bank of the Neches River, approximately 8 miles SE of Beaumont, Texas.

CRUDE OIL STREAMS: Big Hill Sweet and Big Hill Sour.

DELIVERY POINTS: Unocal Beaumont Terminal No. 2 Crude Dock and connections to local commercial pipelines.

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 1 Dock (No. 2).

MAXIMUM LENGTH

OVERALL (LOA): 1,020 feet.
MAXIMUM BEAM: 150 feet.
MAXIMUM DRAFT: 40 feet fresh water.
MAXIMUM AIR DRAFT: 136 feet.
MAXIMUM DEADWEIGHT TONS (DWT): Maximum DWT at Dock No. 2 is 150,000 DWT. Vessels larger than 85,000 DWT, 875 feet LOA, or 125 feet beam are restricted to daylight transit. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: None.
OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.

CUSTOMARY ANCHORAGE: South of Sabine Bar-Buoy. There is an additional anchorage at the Sabine Bar for vessels with draft of 39 feet or less.

SHELL 20-INCH PIPELINE (SPL)

LOCATION: Jefferson County, Texas, Seven miles west and one mile north of FM 365 and Old West Port Arthur Road.

CRUDE OIL STREAMS: Big Hill Sweet and Big Hill Sour.

DELIVERY POINT: SPL East Houston Terminal, Exxon Junction (Channelview), Oil Tanking Junction.

MARINE DISTRIBUTION FACILITIES: None.

EXHIBIT C

SAMPLE—OFFER GUARANTEE STANDBY LETTER OF CREDIT

BANK LETTERHEAD

IRREVOCABLE STANDBY LETTER OF CREDIT

Date: _____
 To: Acquisition and Sales Division, Mail Stop FE-4451, Strategic Petroleum Reserve, Project Management Office, U.S. Department of Energy, 900 Commerce Road East, New Orleans, LA 70123

AMOUNT OF LETTER OF CREDIT: _____
 U.S. \$ (_____)
 CONTRACTOR: _____
 NOTICE OF SALE NO: _____
 LETTER OF CREDIT NO: _____
 EXPIRATION DATE: _____
 AMERICAN BANKERS ASSOCIATION (ABA) NO: _____

Gentlemen:
 We hereby establish in the U.S. Department of Energy's favor our irrevocable standby Letter of Credit effective immediately for the account of our customer in response to the above U.S. Department of Energy's Notice of Sale, including any amendments thereto, for the sale of Strategic Petroleum Reserve petroleum. This Letter of Credit expires 60 days from the date set for receipt of offers.

This letter of credit is available by your draft/s at sight, drawn on us and accompanied by a manually signed statement that the signer is an authorized representative of the Department of Energy, and the following statement:

"THIS DRAWING OF U.S. \$ _____ (_____) AGAINST YOUR LETTER OF CREDIT NUMBERED _____, DATED _____, IS DUE THE U.S. GOVERNMENT BECAUSE OF THE FAILURE OF (CONTRACTOR) TO HONOR ITS OFFER TO ENTER INTO A CONTRACT FOR THE PURCHASE OF PETROLEUM FROM THE STRATEGIC PETROLEUM RESERVE, IN ACCORDANCE WITH THE U.S. GOVERNMENT'S NOTICE OF SALE NO.

_____, INCLUDING ANY AMENDMENTS THERETO."

Drafts must be presented for payment on or before the expiration date of this Letter of Credit at our bank. The Government may make multiple drafts against this Letter of Credit.

Upon receipt of the U.S. Department of Energy's demand by hand, mail express delivery, or other means, at our office located at _____, we will honor the demand and make payment, by 3 p.m. Eastern Time of the next business day following receipt of the demand, by either wire transfer of funds as a deposit to the account of the U.S. Treasury over the Fedwire Deposit System Network, or by electronic funds transfer through the Automated Clearing House Network, using the Federal Remittance Express Program. The information to be included in each transfer will be as provided in the above referenced Notice of Sale.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision, International Chamber of Commerce Publication no. 500) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the state in which the issuer's head office within the United States is located.

We hereby agree with the drawers, endorsers and bona fide holders that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation and delivery of the above documents for payment at our bank on or before the expiration date.

Address all communications regarding this Letter of Credit to (name and phone number).

Very truly yours,

(Authorized Signature)

(Typed Name and Title)

Instructions for Offer Letter of Credit

1. The depository institution must be an account holder with the Federal Reserve Banking System and a participant (on line) in the Fed's Fedwire Deposit System Network funds transfer system.

2. Letter of Credit must not vary in substance from this attachment. Provide a copy of this attachment to your bank.

3. Banks shall fill in blanks except those in the drawing statement. The drawing statement is in bold print with double underlines for the blanks. Do not fill in double underlined blanks.

4. The information to be included and format to be used either for a wire transfer as a deposit over the Fedwire Deposit System Network or electronic funds transfer through the Automated Clearing House network, using the Federal Remittance Express Program, will be provided in the Contract.

5. Type name and title under authorized signature.

EXHIBIT D**SAMPLE—PAYMENT AND PERFORMANCE
LETTER OF CREDIT****BANK LETTERHEAD****IRREVOCABLE STANDBY LETTER OF
CREDIT**

Date: _____

To: Acquisition and Sales Division, Mail
Stop FE-4451, Strategic Petroleum
Reserve, Project Management Office, U.S.
Department of Energy, 900 Commerce Road
East, New Orleans, LA 70123AMOUNT OF LETTER OF CREDIT U.S. \$: ____
(_____)

CONTRACTOR: _____

CONTRACT NO: _____

LETTER OF CREDIT NO: _____

EXPIRATION DATE: _____

AMERICAN BANKERS ASSOCIATION
(ABA) NO: _____

Gentlemen:

We hereby establish in the U.S.
Department of Energy's favor our irrevocable
standby Letter of Credit effective
immediately for the account of our
customer's above contract with the U.S.
Department of Energy for the sale of Strategic
Petroleum Reserve petroleum.

This letter of credit is available by your
draft/s at sight, drawn on us and
accompanied by a manually signed statement
that the signer is an authorized representative
of the Department of Energy, and one or both
of the following statements:

a. "I HEREBY CERTIFY THAT THE
UNITED STATES GOVERNMENT HAS
DELIVERED CRUDE OIL UNDER THE
TERMS OF CONTRACT NUMBER
AND THAT
(CONTRACTOR) HAS NOT PAID UNDER

THE TERMS OF THAT CONTRACT, AND
AS A RESULT OWES THE U.S.
GOVERNMENT

U.S. \$ _____."

b. "I HEREBY CERTIFY THAT
(CONTRACTOR) HAS FAILED TO TAKE
DELIVERY OF CRUDE OIL UNDER THE
TERMS OF CONTRACT NUMBER

_____, AND AS A RESULT
OWES THE U.S. GOVERNMENT
U.S. \$ _____."

Drafts must be presented for payment on or
before the expiration date of this Letter of
Credit at our bank. The Government may
make multiple drafts against this Letter of
Credit.

Upon receipt of the U.S. Department of
Energy's demand by hand, mail express
delivery, or other means, at our office located
at _____, we will honor the
demand and make payment, by 3 p.m.
Eastern Time of the next business day
following receipt of the demand, by either
wire transfer of funds as a deposit to the
account of the U.S. Treasury over the
Fedwire Deposit System Network, or by
electronic funds transfer through the
Automated Clearing House Network, using
the Federal Remittance Express Program. The
information to be included in each transfer
will be as provided in the above referenced
contract.

This Letter of Credit is subject to the
Uniform Customs and Practice for
Documentary Credits (1993 Revision,
International Chamber of Commerce
Publication no. 500) and except as may be
inconsistent therewith, to the Uniform
Commercial Code in effect on the date of
issuance of this Letter of Credit in the state
in which the issuer's head office within the
United States is located.

We hereby agree with the drawers,
endorsers and bona fide holders that all
drafts drawn under and in compliance with
the terms of this Letter of Credit will be duly
honored upon presentation and delivery of
the above documents for payment at our bank
on or before the expiration date.

Address all communications regarding this
Letter of Credit to (name and phone number).

Very truly yours,

(Authorized Signature)

(Typed Name and Title)

Instructions for Payment and Performance*Letter of Credit*

1. The depository institution must be an
account holder with the Federal Reserve
Banking system and a participant (on line) in
the Fed's Fedwire Deposit System Network
funds transfer system.

2. Letter of Credit must not vary in
substance from this attachment. Provide a
copy of this attachment to your bank.

3. Banks shall fill in blanks except those
in the drawing statements. The drawing
statements are in bold print with double
underlines for the blanks. Do not fill in
double underlined blanks.

4. The information to be included and
format to be used either for a wire transfer
as a deposit over the Fedwire Deposit System
Network or electronic funds transfer through
the Automated Clearing House network,
using the Federal Remittance Express
Program, will be provided in the Contract.

5. Type name and title under authorized
signature.

BILLING CODE 6450-01-P

STRATEGIC PETROLEUM RESERVE CRUDE OIL DELIVERY REPORT

[illegible]