
**REQUEST FOR PROPOSAL
(FOR DESIGN-BUILD
MULTIPLE AWARD TASK ORDER
(MATOC) CONTRACT)**

SOLICITATION NO. W9128F-09-R-0082

**INDEFINITE DELIVERY CONTRACT FOR
CONSTRUCTION WITH INCIDENTAL DESIGN
SERVICES FOR SUSTAINMENT,
REHABILITATION AND MODERNIZATION
(SRM) AND UNSPECIFIED MILITARY
CONSTRUCTION (UNMC) – FUNDED
CONSTRUCTION IN SUPPORT OF FACILITY
INFRASTRUCTURE FOR POL OPERATIONS**

**VARIOUS LOCATIONS IN THE CONTINENTAL
UNITED STATES (CONUS), ALASKA AND
HAWAII**

NOVEMBER 2009



US Army Corps of Engineers
Omaha District

This page was intentionally left blank for duplex printing.

REQUEST FOR PROPOSAL
(DESIGN-BUILD MULTIPLE AWARD TASK ORDER CONTRACT)
FOR

**INDEFINITE DELIVERY CONTRACT FOR CONSTRUCTION WITH INCIDENTAL DESIGN SERVICES FOR
SUSTAINMENT, REHABILITATION AND MODERNIZATION (SRM) AND UNSPECIFIED MILITARY
CONSTRUCTION (UNMC) – FUNDED CONSTRUCTION IN SUPPORT OF FACILITY INFRASTRUCTURE FOR
POL OPERATIONS**

VARIOUS LOCATIONS IN THE CONTINENTAL UNITED STATES (CONUS), ALASKA AND HAWAII

PROJECT TABLE OF CONTENTS

DIVISION 00 - PROCUREMENT AND CONTRACTING REQUIREMENTS

00 01 00	PROJECT TABLE OF CONTENTS
00 11 00	SOLICITATION/CONTRACT FORM (SF 1442) AND CLIN PRICING SCHEDULE
00 21 00	INSTRUCTIONS, CONDITIONS & NOTICES TO OFFERORS
00 22 00	PROPOSAL SUBMISSION REQUIREMENTS, INSTRUCTIONS AND EVALUATION
ATTACHMENT 1A AND 1B	BLANK PERFORMANCE EVALUATION FORMS (DD FORM 2626 AND DD FORM 2631)
ATTACHMENT 2	SAMPLE PROJECT
ATTACHMENT 3	DAVIS BACON WAGE RATES – SAMPLE PROJECT
ND080002	GENERAL WAGE DECISION – HIGHWAY DATED 10/16/2009
ND080014	GENERAL WAGE DECISION – HEAVY DATED 09/05/2008
00 45 00	REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS
00 72 00	CONTRACT CLAUSES
00 73 00	SPECIAL CONTRACT REQUIREMENTS

DIVISION 01 - GENERAL REQUIREMENTS

01 30 00.24	OTHER ADMINISTRATIVE AND SPECIAL REQUIREMENTS
01 33 00	SUBMITTAL PROCEDURES
REGISTER	SAMPLE SUBMITTAL REGISTER
E4025	ENG FORM 4025 TRANSMITTAL FORM
01 35 26	GOVERNMENTAL SAFETY REQUIREMENTS
01 45 01	USACE QUALITY CONTROL
01 45 01AT	DAILY QUALITY CONTROL REPORT
01 62 35	RECYCLED / RECOVERED MATERIALS
01 78 36.00 24	WARRANTY OF CONSTRUCTION AND DESIGN
01 78 39.00 24	AS-BUILT DRAWINGS

This page was intentionally left blank for duplex printing.

SOLICITATION, OFFER AND AWARD (Construction, Alteration, or Repair)	1. SOLICITATION NO. W9128F-09-R-0082	2. TYPE OF SOLICITATION ☐ SEALED BID (IFB) ☒ NEGOTIATED (RFP)	3. DATE ISSUED 24 NOV 2009	PAGES OF PAGES 1 OF 3
--	--	--	--------------------------------------	--------------------------

IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO.	6. PROJECT NO.
-----------------	-------------------------------------	----------------

7. ISSUED BY U.S.ARMY CORPS OF ENGINEERS, OMAHA Contracting Division (CENWO-CT) 1616 Capitol Ave Omaha, Nebraska 68102-4901	CODE CT	8. ADDRESS OFFER TO U.S.ARMY CORPS OF ENGINEERS, OMAHA Attn: CONTRACTING DIVISION (CENWO-CT) 1616 Capitol Ave Omaha, Nebraska 68102-4901
---	------------	--

9. FOR INFORMATION CALL:	A. NAME CHERYL BUNTING	B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) (402) 995-2078
-----------------------------	----------------------------------	--

SOLICITATION

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying no., date):

INDEFINITE DELIVERY CONTRACT FOR CONSTRUCTION WITH INCIDENTAL DESIGN SERVICES FOR SUSTAINMENT, REHABILITATION AND MODERNIZATION (SRM) AND UNSPECIFIED MILITARY CONSTRUCTION (UNMC) – FUNDED CONSTRUCTION IN SUPPORT OF FACILITY INFRASTRUCTURE FOR POL OPERATIONS, VARIOUS LOCATIONS IN THE CONTINENTAL UNITED STATES (CONUS), ALASKA AND HAWAII

This solicitation is Unrestricted. Up to four Indefinite Delivery Type Contracts may be awarded for a base performance period of two years with an option for an additional three years (total of 5 years). The combined total value of the four contracts shall not exceed \$324,000,000. The minimum contract guarantee is \$5,000. Except as provided below, work will be performed by the selected qualified Contractors pursuant to firm-fixed-price contracts. Task Orders will be requested from time to time, as the need arises, during the contract period. The amount of any one Task Order will not exceed the contract amount. Contract options may not be awarded if not supported by sufficient workload. Wage rates applicable to the area of work will be added to each task order. The offeror agrees to do all the work described in these documents.

RETURN WITH PROPOSAL: SECTIONS 00 11 00 (SF1442 AND CLIN PRICE SCHEDULE), 00 45 00, AND INFORMATION REQUIRED IN SECTION 00 22 00. OTHER BONDING INFORMATION: SEE SECTION 00 72 00 CONTRACT CLAUSES "FAR 52.228-15 PERFORMANCE AND PAYMENT BONDS"

*BLOCK 13A. – REFER TO SECTION 00 22 00 FOR THE NUMBER OF COPIES TO BE SUBMITTED WITH THE ORIGINAL OFFER.

11. The Contractor shall begin performance within 10 calendar days and complete it within ** calendar days after receiving ☐ award, ☒ notice to proceed. This performance period is ☒ mandatory, ☐ negotiable. (**By Task Order_____)

12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES," indicate within how many calendar days after award in Item 12B.) ☒ YES ☐ NO	12B. CALENDAR DAYS 10
--	------------------------------

13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and * copies to perform the work required are due at the place specified in Item 8 by 1400 (hour) local time 30 DEC 2009 (date). If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.

B. An offer guarantee ☐ is, ☒ is not required.

C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.

D. Offers providing less than 180 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)					15. TELEPHONE NO. (Include area code)				
DUNS Number :					16. REMITTANCE ADDRESS (Include only if different than Item 14)				
CODE FACILITY CODE									
17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within ** calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement)									
AMOUNTS		SEE ATTACHED CLIN PRICING SCHEDULE Contractor's Fax No. _____ Contractor's E-Mail address _____					CAGE CODE _____		
18. The offeror agrees to furnish any required performance and payment bonds.									
19. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the solicitation - give number and date of each)									
AMENDMENT NO.									
DATE									
20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)					20B. SIGNATURE			20C. OFFER DATE	
AWARD (To be completed by Government)									
21. ITEMS ACCEPTED:									
22. AMOUNT				23. ACCOUNTING AND APPROPRIATION DATA					
24. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)				ITEM	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO ☐ 10 U.S.C. 2304(c) () ☐ 41 U.S.C. 253(c) ()				
26. ADMINISTERED BY CODE				27. PAYMENT WILL BE MADE BY					
U.S. Army Engineer District, Omaha 1616 Capitol Ave. Omaha, Nebraska 68102-4901				USAED Omaha c/o USACE Finance Center 5722 Integrity Drive Millington, TN 38054-5005					
CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE									
☐ 28. NEGOTIATED AGREEMENT (contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.					☐ 29. AWARD (Contractor is not required to sign this document.) Your offer on this solicitation, is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.				
30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)					31A. NAME OF CONTRACTING OFFICER (Type or print)				
30B. SIGNATURE				30C. DATE		31B. UNITED STATES OF AMERICA BY			31C. AWARD DATE

STANDARD FORM 1442 BACK (REV. 4-85)

**CONTRACT LINE ITEM PRICING SCHEDULE
(Fuels Labor Disciplines)**

Firm Fixed Price Task Orders

DISCIPLINE	BASE HOURLY RATE	FULLY LOADED HRLY RATE Base Period Year 1	FULLY LOADED HRLY RATE Base Period Year 2	FULLY LOADED HRLY RATE Option Period 1/Year 3	FULLY LOADED HRLY RATE Option Period 1/ Year 4	FULLY LOADED HRLY RATE Option Period 1/Year 5
Program Manager						
Project Manager						
Construction Operations Manager						
Project Engineer I (Senior Staff)						
Project Engineer II						
Business/Accounting/Procurement/ Contract Admin Manager						
Procurement Specialist						
Project Accountant I (Senior Staff)						
Project Accountant II						
Engineer I (Senior Staff)						
Engineer II						
Engineer III						
Superintendent I (Senior Staff)						
Superintendent II						
Site Safety and Health Officer						
Contractor Quality Control Officer						
Project Controls Specialist						
Controls Technician						
Equipment Operator						
API Inspector						
Laborer						
Site Foreman						
Pipefitter						
Boilermaker						
Ironworker						
NACE Inspector						
Painter						
Electrician						

G&A for Past Two Years

Design	Construction:
2007:	2007:
2008:	2008:

G&A Overhead Rates for this Contract

Design:	Construction:
---------	---------------

Option Period Escalation Factor for Base Labor Rates

Design:	Construction:
---------	---------------

This page was intentionally left blank for duplex printing.

SECTION 00 21 00

INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS
(6/07; Rev 3/09)

INDEX

Attachment: Required Central Contractor Registration

- 1 (FAR 52.204-6) DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (APR 2008)
- 2 (FAR 52.211-2) AVAILABILITY OF SPECIFICATIONS, STANDARDS, AND DATA ITEM DESCRIPTIONS LISTED IN THE ACQUISITION STREAMLINING AND STANDARDIZATION INFORMATION SYSTEM (ASSIST) (JAN 2006)
- 3 (FAR 52.215-1) INSTRUCTIONS TO OFFERORS--COMPETITIVE ACQUISITION (JAN 2004)
- 4 (FAR 52.215-20) REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997)
- 5 (FAR 52.216-1) TYPE OF CONTRACT (APR 1984).
- 6 (FAR 52.216-27) SINGLE OR MULTIPLE AWARDS (OCT 1995)
- 7 (FAR 52.232-18) AVAILABILITY OF FUNDS (APR 1984)
- 8 (FAR 52.233-2) SERVICE OF PROTEST (SEPT 2006).
- 9 (FAR 52.236-28) PREPARATION OF PROPOSALS—CONSTRUCTION (OCT 1997)
- 10 (FAR 52.236-27) SITE VISIT (CONSTRUCTION) (FEB 1995).
- 11 DFARS 252.215-7003 EXCESSIVE PASS-THROUGH CHARGES – IDENTIFICATION OF SUBCONTRACT EFFORT (MAY 2008)
- 12 DEFINITION OF "DESIGN-BUILD" PROCESS
- 13 SOLICITATION RESTRICTIONS
 - 13.1 GENERAL CONTRACTOR
 - 13.2 ESTIMATED DESIGN AND CONSTRUCTION COST
 - 13.3 SUBMISSION, MODIFICATION, REVISION, AND WITHDRAWAL OF PROPOSALS
 - 13.4 SUBMISSION DEADLINE
 - 13.5 RETURN ADDRESS REQUIREMENTS
 - 13.6 CADD AND ELECTRONIC DESIGN FILES (PROVIDED)
- 14 SMALL BUSINESS SIZE STANDARD.
- 15 NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS).
- 16 OFFEROR'S QUESTIONS AND COMMENTS.
 - 16.1 PLAN HOLDER'S LIST
- 17 GENERAL DESCRIPTION OF WORK
- 18 PROPOSAL SUBMISSION REQUIREMENTS, EVALUATION AND CONTRACT AWARD
- 19 SOURCE SELECTION BOARD (SSB)
- 20 SALES AND USE TAX
- 21 JOINT VENTURE AGREEMENTS

SECTION 00 21 00

INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

1 (FAR 52.204-6) DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (APR 2008)

a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS number or "DUNS+4" that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same concern.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

- (i) Company legal business name.
- (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
- (iii) Company physical street address, city, state and ZIP Code.
- (iv) Company mailing address, city, state and ZIP Code (if separate from physical).
- (v) Company telephone number.
- (vi) Date the company was started.
- (vii) Number of employees at your location.
- (viii) Chief executive officer/key manager.
- (ix) Line of business (industry).
- (x) Company Headquarters name and address (reporting relationship within your entity).

(End of provision)

2 (FAR 52.211-2) AVAILABILITY OF SPECIFICATIONS, STANDARDS, AND DATA ITEM DESCRIPTIONS LISTED IN THE ACQUISITION STREAMLINING AND STANDARDIZATION INFORMATION SYSTEM (ASSIST) (JAN 2006)

(a) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

- (1) ASSIST (<http://assist.daps.dla.mil>);
- (2) Quick Search (<http://assist.daps.dla.mil/quicksearch>);
- (3) ASSISTdocs.com (<http://assistdocs.com>).

(b) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

- (1) Using the ASSIST Shopping Wizard (<http://assist.daps.dla.mil/wizard>);
 - (2) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or
 - (3) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.
- (End of provision)

3 (FAR 52.215-1) INSTRUCTIONS TO OFFERORS--COMPETITIVE ACQUISITION (JAN 2004)

(a) *Definitions.* As used in this provision—

"Discussions" are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

"In writing," "writing," or "written" means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

"Proposal modification" is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

"Proposal revision" is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

"Time," if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to solicitations.* If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals.*

(1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show—

- (i) The solicitation number;
- (ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);
- (iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;
- (iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and
- (v) Name, title, and signature of person authorized to sign

the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) *Submission, modification, revision, and withdrawal of proposals.*

(i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii) (A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit

modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Offer expiration date.* Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall—

(1) Mark the title page with the following legend:
This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:
Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award.* (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total

evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

4 (FAR 52.215-20) REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997)

(a) Exceptions from cost or pricing data.

(1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include—

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount

policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with [Table 15-2](#) of FAR [15.408](#).

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR [15.406-2](#).

(End of provision)

5 (FAR 52.216-1) TYPE OF CONTRACT (APR 1984).

The Government contemplates award of up to four Indefinite Delivery Type firm fixed price contracts resulting from this solicitation.

(End of provision)

6 (FAR 52.216-27) SINGLE OR MULTIPLE AWARDS (OCT 1995)

The Government may elect to award a single delivery order contract or task order contract or to award multiple delivery order contracts or task order contracts for the same or similar supplies or services to two or more sources under this solicitation.

(End of provision)

7 (FAR 52.232-18) AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

8 (FAR 52.233-2) SERVICE OF PROTEST (SEPT 2006).

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from District Counsel, 1616 Capitol Avenue, Omaha, Nebraska 68102-4901.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

9 (FAR 52.236-28) PREPARATION OF PROPOSALS—CONSTRUCTION (OCT 1997)

(a) Proposals must be (1) submitted on the forms furnished by the Government or on copies of those forms; and (2) manually signed. The person signing a proposal must initial each erasure or change appearing on any proposal form.

(b) The proposal form may require offerors to submit proposed prices for one or more items on various bases, including—

- (1) Lump sum price;
- (2) Alternate prices;
- (3) Units of construction; or
- (4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires submission of a proposal on all items, failure to do so may result in the proposal being rejected without further consideration. If a proposal on all items is not required, offerors should insert the words "no proposal" in the space provided for any item on which no price is submitted.

(d) Alternate proposals will not be considered unless this solicitation authorizes their submission.

(End of provision)

10 (FAR 52.236-27) SITE VISIT (CONSTRUCTION) (FEB 1995).

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) To be included with each Task Order.

11 DFARS 252.215-7003 EXCESSIVE PASS-THROUGH CHARGES - IDENTIFICATION OF SUBCONTRACT EFFORT (MAY 2008)

(a) Definitions. "Added value," "excessive pass-through charge," "subcontract," and "subcontractor," as used in this provision, are defined in the clause of this solicitation entitled "Excessive Pass-Through Charges" (DFARS 252.215-7004).

(b) General. The offeror's proposal shall exclude excessive pass-through charges.

(c) Performance of work by the Contractor or a subcontractor.

(1) The offeror shall identify in its proposal the total cost of the work to be performed by the offeror, and the total cost of the work to be performed by each subcontractor, under the contract, task order, or delivery order.

(2) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, the offeror shall identify in its proposal—

(i) The amount of the offeror's indirect costs and profit applicable to the work to be performed by the subcontractor(s); and

(ii) A description of the added value provided by the offeror as related to the work to be performed by the subcontractor(s).

(3) If any subcontractor proposed under the contract, task order, or delivery order intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract, the offeror shall identify in its proposal—

(i) The amount of the subcontractor's indirect costs and profit applicable to the work to be performed by the lower-tier subcontractor(s); and

(ii) A description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

(End of provision)

12 DEFINITION OF "DESIGN-BUILD" PROCESS

The "Design-Build Process is the procurement of a facility utilizing a Request for Proposal (RFP) to solicit for the design and construction of a facility by a single contractual entity. The contractual entity may be a "Design-Build" firm, or joint venture between an architect-engineer (A-E) and construction firm, or a construction management (CM) firm joint venture with an A-E and a construction firm.

13 SOLICITATION RESTRICTIONS

13.1 GENERAL CONTRACTOR

This solicitation is UNRESTRICTED, open to both large and small business participation.

13.2 ESTIMATED DESIGN AND CONSTRUCTION COST

The estimated construction with incidental design combined total value of the four Indefinite Delivery Type Contracts for this solicitation is not to exceed \$324,000,000. The task orders are expected to be between \$100,000 and \$10,000,000.

13.3 SUBMISSION, MODIFICATION, REVISION, AND WITHDRAWAL OF PROPOSALS

See FAR 52.215-1 INSTRUCTIONS TO OFFERORS-COMPETITIVE ACQUISITION, subparagraph "(c) *Submission, modification, revision, and withdrawal of proposals.*" below for acceptable methods. Note: Electronic commerce or facsimile are not acceptable methods, unless indicated otherwise.

13.4 SUBMISSION DEADLINE

Offers shall be submitted at the location stated and by the time and date as specified in Section 00 11 00, Page 1.

Due to heightened security at Government installations, those offerors who have their proposals hand-carried* shall contact Cheryl Bunting, Contract Specialist at (402) 995-2078 prior to delivering to the U.S. Army Corps of Engineer District, Omaha, 1616 Capitol Ave, Omaha, NE 68102-4901.

On the date specified and for thirty (30) minutes prior to the specified time, a Contracting representative will be in the lobby to receive proposals. Containers (i.e. envelopes, packages, boxes) will be screened for security purposes. Hand-carried means the individual must be able to carry on their person. If due to size or volume, packages or boxes need to be wheeled in on a cart or dolly, you will be required to go to the dock area located on the northeast side of the facility. After inspection and screening, you will be allowed in the building after presenting valid photo identification. At the time specified in Section 00 11 00, Page 1, local time, it will be announced that receipt of proposals is closed. Official time will be established by time/stamp clock designated by the Contract Specialist.

*This instruction shall also apply to those proposals delivered through a delivery or parcel service.

NOTE: No parking on the street in front of the facility entrances will be allowed. Passenger vehicles will need to locate parking meters or parking garages before delivering proposals. Delivery trucks must go to the dock. The vehicle will be inspected and packages screened at the dock. After inspection and screening, the delivery person will be allowed into the building.

13.5 RETURN ADDRESS REQUIREMENTS

Offeror(s) must ensure that ALL mail sent to the Omaha District, U.S. Army Corps of Engineers, either pre-contract or post-contract award, has a return mailing address on the outside of the envelope, package, box, etc. ANY MAIL addressed to the U.S. Army Corps of Engineers, including but not limited to bids, modifications to bids, proposals, revised proposals, bid guarantees, bonds, correspondence, etc., will be REJECTED by the US Army Corps of Engineers mail room facility located at 1616 Capitol Avenue, Omaha, Nebraska 68102-4901 if it does not contain a return mailing address. **THERE WILL BE NO EXCEPTIONS.**

13.6 CADD AND ELECTRONIC DESIGN FILES (PROVIDED)

The CADD survey files and other electronic design files as identified below have been included, as applicable, by Task Order. The Government provided survey, and the other electronic design files are provided to assist the Contractor in preparing their proposal using their own commercially purchased software. The Contractor shall take all professionally prudent and reasonable actions to verify the accuracy of the data provided and shall assume all liability from the use of these files. The Contractor shall be responsible for obtaining any other software necessary to view the files provided. No other CADD design files will be provided for proposal preparation other than those listed below. Files are only available in [To be determined by Task Order, as applicable].

14 SMALL BUSINESS SIZE STANDARD.

The small business size standard for this procurement is \$33.5 million in gross annual receipts for the preceding 3 fiscal years.

15 NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS).

In accordance with Sector 23 of the NAICS Manual, the work in this solicitation is assigned classification code 237120.

16 OFFEROR'S QUESTIONS AND COMMENTS.

Questions and/or comments relative to these documents should be submitted via e-mail or mailed to: U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO-CT-M 1616 Capitol Avenue, Omaha, NE 68102-4901. Comments should reach this office no later than 14 calendar days prior to the date set for receiving of proposals, if feasible, in order that changes, if needed, may be added by amendment. E-mail addresses, FAX numbers, items for question and points of contact are listed below. Phone calls with questions should be made between 8:30 a.m. and 3:30 p.m. (Central Standard Time) Monday through Friday.

Note: A courtesy copy of all questions shall be sent to the Contract Specialist (Contractual Matters Point of Contact), the Program Manager and the Specifications Section (Technical Contents Points of Contact), except for Small Business questions. Small Business questions shall go to the Small Business Matters point of contact.

<u>Items for Question</u>	<u>Points of Contact/ Phone numbers/ FAX Numbers</u>	<u>E-mail Addresses</u>
Contractual Matters:	Cheryl Bunting Contract Specialist 402-995-2078 (phone) 402-995-4199 (fax)	Cheryl.A.Bunting@usace.army.mil
Small Business Matters	Hubert Carter 402-995-2910 (phone)	Hubert.J.Carter@usace.army.mil
Technical Contents	Program Coordinator Lawrence J. Woscyna Lawrence Woscyna 402-293-661-4269 (phone)	Lawrence.J.Woscyna@usace.army.mil
	Or	
	Specifications Section Doug Larsen 402-995-2181 (Phone)	Douglas.R.Larsen@usace.army.mil

Note: It shall be the Contractor's, Subcontractor's and Supplier's responsibility to check for amendments (Link available at: <http://www.fbo.gov/>).

16.1 PLAN HOLDER'S LIST

For **Viewing a List of Interested Vendors** (i.e. planholders List) and Receiving Notifications or e-mail of changes regarding a solicitation, Federal Business Opportunities has these features available (www.fbo.gov.) For a solicitation, go to www.fbo.gov and register as a vendor or enter user name and password to login. If you wish for General Contractors, Subcontractors, Suppliers, Plan Rooms or Print Shops to have the ability to contact you, click on the "Add me to Interested Vendors" for the solicitation.

17 GENERAL DESCRIPTION OF WORK

The projects will include construction with incidental design for Petroleum, Oils, and Lubricants (POL) fuel storage complexes or portions thereof in support of fuel distribution systems for CONUS, Alaska and Hawaii. Work shall be in accordance with Request for Proposal documents issued with the requirements of this solicitation and each subsequent task order.

18 PROPOSAL SUBMISSION REQUIREMENTS, EVALUATION AND CONTRACT AWARD

See Section 00 22 00 PROPOSAL INSTRUCTIONS, SUBMISSION REQUIREMENTS, AND EVALUATION.

19 SOURCE SELECTION BOARD (SSB)

The Contracting Officer has established a Source Selection Board to conduct an evaluation of each proposal received in response to this Solicitation. The evaluation will be based exclusively on the merits and content of the proposal and any subsequent discussion required. The identities of the SSB personnel are confidential, and any attempt by the proposers to contact these individuals is prohibited.

Note: In addition to the requirements of FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES the following known taxes are applicable.

20 SALES AND USE TAX

As applicable to the requirements of the location for each Task Order.

21 JOINT VENTURE AGREEMENTS

See Section 00 22 00 PROPOSAL INSTRUCTIONS, SUBMISSION REQUIREMENTS, AND EVALUATION for applicable requirements.

REQUIRED CENTRAL CONTRACTOR REGISTRATION (CCR)

Register Now: Don't wait until you submit an offer on a solicitation. You must be registered to receive the contract award. New registrations usually take 1-2 business days to process once completed by the vendor.

Registration Information:

Internet: <https://www.bpn.gov/ccr/default.aspx>

The following FOUR key items you need before beginning registration.

1. Data Universal Numbering System (DUNS) Number provided by Dun and Bradstreet (D&B)
2. Tax Identification Number (TIN) and Taxpayer Name used in Federal tax matters
3. Statistical Information about your business
4. Electronic Funds Transfer (EFT) Information for payment of invoices

For CCR Assistance:

Internet: <https://www.bpn.gov/ccr/help.aspx> or

Contact the Federal Service Desk (8am - 8pm Eastern Time) at:
866-606-8220
334-206-7828

SECTION 00 22 00

**PROPOSAL INSTRUCTIONS,
SUBMISSION REQUIREMENTS AND EVALUATION**

INDEX

1.	CONTRACT INFORMATION	3
1.1.	FOUR INDEFINITE DELIVERY TYPE CONTRACTS.....	3
1.2.	TYPES OF SERVICES.....	3
1.3.	DELIVERY OR PERFORMANCE-PERIOD REQUIREMENTS.....	4
1.4.	TASK ORDERS	4
2.	WHO MAY SUBMIT	5
3.	NUMBER OF COPIES AND SIZE OF PRINTED MATTER SUBMISSIONS	5
4.	WHERE TO SUBMIT.....	5
5.	SUBMISSION DEADLINE	5
6.	EVALUATION OF PROPOSALS	6
6.1.	EVALUATION.....	6
6.2.	ESTABLISHMENT OF COMPETITIVE RANGE.....	7
6.3.	TRADEOFF PROCESS	7
6.4.	EVALUATION DEFINITIONS.....	7
7.	EVALUATION CRITERIA	9
7.1.	TAB 1 – CONTRACTOR TEAM EXPERIENCE	10
7.2.	TAB 2 – KEY PERSONNEL QUALIFICATIONS	11
7.3.	TAB 3 –SUBCONTRACTOR’S QUALIFICATIONS/EXPERIENCE WITH PRIME CONTRACTOR.	14
7.4.	TAB 4 - PAST PERFORMANCE, CONSTRUCTION	16
7.5.	TAB 5 – SAMPLE PROBLEM-TECHNICAL APPROACH.....	19
7.6.	TAB 6 – EXHIBIT DOCUMENTS.....	20
7.7.	TAB 7 – UTILIZATION OF SMALL BUSINESS CONCERNS	21
7.8.	TAB 8 – PRICING	27
8.	JOINT VENTURES.....	29
8.1.	REGISTERED IN CCR	29
8.2.	CONTACT DUNN & BRADSTREET	29
8.3.	NEW COMPANY	29
8.4.	CONTACT INFORMATION	29
8.5.	SIGNATURE REQUIREMENTS	30

Sustainment, Rehabilitation And Modernization (SRM)
And Unspecified Military Construction (UNMC)-
Funded Construction in Support of Facility Infrastructure
For POL Operations
**VARIOUS LOCATIONS IN THE CONTINENTAL
UNITED STATES (CONUS), ALASKA AND HAWAII**

W9128F-09-R-0082

8.6.	CORPORATE CERTIFICATE	30
8.7.	JOINT VENTURE REQUIREMENTS	30
9.	COMPETITIVE RANGE	31
10.	COMMUNICATIONS	31
11.	FINAL PROPOSAL REVISIONS	32
12.	AWARD OF CONTRACT.....	33
13.	DEBRIEFING	33

ATTACHMENTS:

Attachment 1a and 1b – Blank Performance Evaluation Forms (DD Form 2626 and DD Form 2631)

Attachment 2 – Sample Problem

Attachment 3 – Davis Bacon Wage Rates (Sample Project)

SECTION 00 22 00

PROPOSAL INSTRUCTIONS, SUBMISSION REQUIREMENTS AND EVALUATION

1. CONTRACT INFORMATION

1.1. FOUR INDEFINITE DELIVERY TYPE CONTRACTS

Four Indefinite Delivery Type Contracts may be awarded for a base performance period of two years with an option for an additional three years. The combined total value of the four contracts shall not exceed \$324,000,000. The minimum contract guarantee is \$5,000. Except as provided below, work will be performed by the selected qualified Contractors pursuant to firm-fixed-price contracts. Task Orders will be requested from time to time, as the need arises, during the contract period. The amount of any one Task Order will not exceed the contract amount. Contract options may not be awarded if not supported by sufficient workload.

1.2. TYPES OF SERVICES

The types of services required under these contracts will include construction with incidental design services for fuel system projects. The successful firm(s) shall be able to design and construct Petroleum, Oils, and Lubricants (POL) fuel storage complexes or portions thereof in support of fuel distribution systems for CONUS, Alaska, and Hawaii. The primary customer is Defense Energy Support Center, a Lead Center of Defense Logistics Agency, headquartered at Ft. Belvoir, VA. Secondary customers include: non Department of Defense (DoD) and other DoD agencies to include Army, Navy, Air Force, and Marines, Reserve and National Guard components, and U.S. Coast Guard.

All work will be accomplished in compliance with Military Fuel Standards, UFC 3-460-01, DoD, American Petroleum Institute (API), state and federal regulations. A component of the contract scope is secondary support of the construction project which includes incidental services in: fuel system design services, environmental services, inspection services and other services needed to complete the construction project. Specialized work to be performed is identified in Table 1.

TABLE 1 – SPECIALIZED WORK

1.	Tank rehabilitation. Work consists of construction, repairing, replacing and upgrading coatings, worn components, corrosion and deficiency to the tank
----	--

	systems necessary to make the tank fully functional for support of mission requirements. Components typically include valves, pumps, piping, controls, dikes/berms, structural components (shell/tank bottom), life safety and fire safety systems.
2.	Tank cleaning prior to API 653 inspection and upgrades. Work includes cleaning to remove residual fuel products, water/sludge removal and preparation of tank for API 653 inspection.
3.	API 653 Inspections and repairs. Tank inspections to determine condition of the tank. The inspection report documents current conditions and requirements for servicing, repairs and upgrades.
4.	Fuel receipt, pipeline and transfer facilities construction, repair, upgrade or replacement.
5.	Fuel dispensing facilities construction, repair, upgrade or replacement.
6.	Construction of fuels support facilities and infrastructure.
7.	Demolition of fuel facilities and components.
8.	Construction and repair of facilities with high potential for environmental release.
9.	Construction, repair and upgrade of facilities to maintain environmental or safety compliance.
10.	Construction and repairs to fuel related facilities include infrastructure, and facilities in direct support of the fuel receipt, transfer, quality control, equipment maintenance, and dispensing systems.

1.3. DELIVERY OR PERFORMANCE-PERIOD REQUIREMENTS

Up to four contracts will be awarded. Delivery or Performance Requirements will be established in each task order scope of work. Period of performance for competitive task orders will be two year base plus one three year option – total 5 years.

1.4. TASK ORDERS

Task orders will be issued on a best value competitive basis.

2. WHO MAY SUBMIT

This solicitation is **UNRESTRICTED AND OPEN TO BOTH LARGE AND SMALL BUSINESS PARTICIPATION**.

Offerors formally organized as design/build entities, or design firms and construction contractors that have formed a team specifically for this project, or any other interested party may submit proposals. In the latter case, a single design firm or construction contractor may offer more than one proposal by entering into more than one association. For the purpose of this solicitation, no distinction is made between a formally organized design/build offeror (or simply "Offeror"), or the design/build contractor, (or simply "Contractor"). All offerors must be registered in the Central Contractor Registration (CCR) in the same manner as they are proposing for this solicitation (i.e. a single entity proposing as a Joint Venture must be registered as a Joint Venture in the CCR) See Paragraph 8, titled "JOINT VENTURES".

The North American Industry Classification System code for this project is 237120, with a size standard for small business of \$33.5 Million dollars gross annual receipts over 3 years.

In order to effectively and equitably evaluate all proposals, the Contracting Officer must receive information sufficiently detailed to clearly describe the proposal.. There will be no public proposal opening. All proposals submitted will become, upon receipt, the property of the U.S. Government and will not be returned. After evaluation of proposals, any extra copies of the proposals deemed unnecessary by the government will be destroyed. The original will be retained for the official contract file. In addition, extra copies of the awardee's proposal will be submitted to the Field and Areas Offices in support of their contract administration functions.

3. NUMBER OF COPIES AND SIZE OF PRINTED MATTER SUBMISSIONS

Offerors should submit **only one original and five (5) copies for Volumes 1, 2 and 3** of the proposal plus one copy on CD-ROM. For Volume 4 – Pricing, submit only one original plus one copy on CD-ROM. All written portions shall be in 8-1/2" x 11" format unless indicated otherwise. The cost and pricing information included for Volume 4 - Pricing files shall also be in MS Excel format.

4. WHERE TO SUBMIT

Offerors shall submit their proposal packages to the USACE Contracting Activity at the address shown in Block 8 of Standard Form 1442.

5. SUBMISSION DEADLINE

Offers shall be submitted at the location stated and by the time and date as specified in Section 00 11 00, Page 1. Any proposal received after this time will be considered a late proposal and will

not be evaluated unless the requirements of FAR 52.215-1 have been complied with concerning late bids/proposals.

Due to heightened security at Government installations, those offerors who have their proposals hand-carried* shall contact Ms Cheryl Bunting Contract Specialist at (402) 995-2078 or (402) 995-2056 prior to delivering their proposal to the U.S. Army Corps of Engineer District, Omaha, 1616 Capitol Ave., Omaha, NE 68102-4901.

On the date specified and for thirty (30) minutes prior to the specified time, a Contracting representative will be in the lobby to receive proposals. Containers (i.e. envelopes, packages, boxes) will be screened for security purposes. Hand-carried means the individual must be able to carry on their person. If due to size or volume, packages or boxes need to be wheeled in on a cart or dolly, you will be required to go to the dock area located on the northeast side of the facility. After inspection and screening, you will be allowed in the building after presenting valid photo identification. At the time specified in Section 00 11 00, Page 1, local time, it will be announced that receipt of proposals is closed. Official time will be established by time/stamp clock designated by the Contract Specialist.

*This instruction shall also apply to those proposals delivered through a delivery or parcel service.

NOTE: No parking on the street in front of the facility entrances will be allowed. Passenger vehicles will need to locate parking meters or parking garages before delivering proposals. Delivery trucks must go to the dock. The vehicle will be inspected and packages screened at the dock. After inspection and screening, the delivery person will be allowed into the building. Allow time for these actions.

6. EVALUATION OF PROPOSALS

6.1. EVALUATION

All proposals and documentation that have been properly submitted will be evaluated. Proposals received will be evaluated on the basis of the factors stated in the solicitation to select the responsible offeror whose proposal is most advantageous and offers the best value to the Government. All proposals must comply with the instructions in the solicitation. The Proposal shall specify on the cover of Volumes 1, 2, 3 and 4, the offeror along with their DUNS number. If the offeror is a joint venture indicate the DUNS number for the team (construction contractor and AE). Each proposal will be reviewed independently with information provided in that volume. Upon award of a contract, Contractors will be required to employ all key personnel submitted for evaluation in the positions identified unless the Contracting Officer gives written consent to an equal or better replacement. Use of all proposed key design and construction personnel will be verified prior to contract award; any changes in identified personnel will be evaluated by the Source Selection Authority (SSA) and may affect the potential for being awarded a contract.

The Contractor shall obtain the Contracting Officer's written consent before making any substitutions for these designated personnel.

6.2. ESTABLISHMENT OF COMPETITIVE RANGE

The Government intends to award based on its evaluation of the initial proposals, without discussions. If the need for discussions is determined to be necessary, a competitive range consisting of all responsible offerors whose proposals are among the most highly rated will be established unless the number of proposals is further reduced for purposes of efficiency, in accordance with FAR 15.306(c)(1).

6.3. TRADEOFF PROCESS

Source selection will be conducted using the Tradeoff Process, FAR 15.101-1. Factors 1 through 7 will be rated using an adjectival methodology with a narrative assessment and Factor 8 (Price) will be subjectively evaluated with the results presented to the SSA for determination of Best Value. Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the resultant contract successfully. Proposals will be evaluated to determine ratings that are supported by narratives, and to identify strengths, weaknesses, and deficiencies in each proposal.

6.4. EVALUATION DEFINITIONS

Strength. A substantive aspect, attribute, or specific item in the proposal that exceeds the solicitation requirements and enhances the probability of successful contract performance.

Weakness. A flaw in the proposal that increases the risk of unsuccessful contract performance. A significant weakness in the proposal is a flaw that appreciably increases the risk.

Deficiency. A material failure of a proposal to meet a solicitation requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

Clarification. Clarifications are limited exchanges between the Government and offerors that may occur when award without discussions is contemplated. If award without discussions is anticipated, offerors may be given the opportunity to clarify certain aspects of their proposals or to resolve minor or clerical errors.

Communications. Communications are exchanges between the Government and offerors after receipt of proposals, leading to establishment of the competitive range.

Discussions. Discussions are negotiations conducted in a competitive acquisition and take place

after establishment of the competitive range. Discussions are tailored to each offeror's proposal, and shall be conducted by the Contracting Officer with each offeror within the competitive range.

Rating. The application of a scale of words, colors, or numbers, used in conjunction with narrative, to denote the degree to which the proposal has addressed a non-cost factor. For purposes of this solicitation, ratings will consist of words (adjectival method) used in conjunction with narratives. Ratings will be applied at the factor (tab) and sub-factor level. If at any point during the evaluation, an Offeror's proposal is determined as not meeting a minimum requirement (that is, below the level of marginal), this "Unacceptable" rating must be included in the rating and narrative assessment at that level and each higher level of evaluation. Therefore, an "Unacceptable" rating at any level must be carried to the factor (tab) level. The following ratings will be used to evaluate Factors 1 through 7:

Exceptional. Proposer possesses virtually all of the desired attributes and qualities set forth in the RFP, for the particular factor being evaluated. Strengths are present indicating maximum benefit to the government and no significant weaknesses are indicated.

Above Average. Proposer possesses many of the desired attributes and qualities set forth in the RFP, for the particular factor being evaluated. Strengths are present indicating significant benefit to the government. The proposal has only minor weaknesses that have no impact on the proposal as a whole and do not require correction.

Average. Proposer possesses some of the desired attributes and qualities set forth in the RFP, for the factor being evaluated. Strengths are present indicating some benefits to the government. Any weaknesses noted have only a minor impact on the proposal and are easily correctable.

Marginal. Proposer possesses only a few of the desired attributes and qualities expressed in the RFP, for the factor being evaluated. The Government may still receive benefit from the proposal submitted. Weaknesses and deficiencies noted are correctable without major revision of the proposal.

Unacceptable. Proposer lacks the desired attributes and qualities necessary to receive a higher rating. Weaknesses and/or deficiencies noted are uncorrectable without a major revision of the proposal.

Neutral. In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated either favorably or unfavorably on past performance.

For Factor 4, Past Performance, Construction, a **neutral rating** will be awarded when no past performance records are available. Per Federal Acquisition Regulation (FAR) 15.305(a)(2)(iv), "In the case of a proposer without a record of relevant past performance or for whom information on past performance is not available, the proposer may not be evaluated either favorably or unfavorably on past performance."

7. EVALUATION CRITERIA

The evaluation factors (tabs) are in order of importance as shown below. The Solicitation establishes the criteria to be used in the evaluation process. Proposals will be submitted by offerors, with tabs (dividers) separating the evaluation factors shown below. Factors/Tabs 1, 2, 3 4, and 5 should be bound in a single binder. Factor/Tab 6 should be bound in a single binder. Factors/Tabs 7 and 8 should be in separate binders.

Table 2 – Evaluation Factors Identified

Volume	Factor	Tab/Title	Relative Importance	Page Limitations
1	Factor 1	Tab 1 – Contractor Team Experience	Equal to Factors 2, 3, 4 and 5	19
1	Factor 2	Tab 2 – Key Personnel Qualifications	Equal to Factors 1, 3, 4 and 5	10
1	Factor 3	Tab 3 – Subcontractor's Qualifications/ Experience with Prime Contractor	Equal to Factors 1, 2, 4 and 5	12
1	Factor 4	Tab 4 – Past Performance, Construction	Equal to Factors 1, 2, 3, and 5	No Page Limitations for the Past Performance Ratings 20 Pages for Project Management, Contract Management and Project Coordination
1	Factor 5	Tab 5 – Sample Problem-Technical Approach	Equal to Factors 1, 2, 3, and 4	32 Pages
2	Factor 6	Tab 6 – Exhibit Documents	6 th Most Important Factor	No Page Limitations
3	Factor 7	Tab 7 – Utilization of Small Business Concerns	7 th Most Important Factor	No Page Limitations
4	Factor 8	Tab 8 – Pricing (Separate Binder)	Least Important Factor. All Evaluation	No Page Limitations

			Factors, other than price, when combined are considered significantly more important than price.	
--	--	--	---	--

7.1. TAB 1 – CONTRACTOR TEAM EXPERIENCE

7.1.1. Submission Requirements

The specialized work to be performed pursuant to these contracts includes (but is not limited to) that described in Table 1 – SPECIALIZED WORK. The specialties are not mutually exclusive and will be grouped by the type of work. In order to encourage small businesses and reduce pass through costs, up to four contracts will be awarded for the specialized work. Offerors shall submit the following:

7.1.1.1. Construction With Incidental Design Experience

The proposal should demonstrate recent experience in construction with incidental design projects of similar specialties requested. Submit no more than eight (8) construction with incidental design projects by the proposed entity/team that most clearly illustrate experience in projects similar to the requested specialty projects as listed above. Project examples should be at least \$100,000 or higher in construction cost and completed within five (5) years of the date that proposals are due. Example information should be one to two pages and include the following for each project: a description/scope; picture/photo; firms on the proposed team that performed this project, construction contract award amount; final construction cost; location; date when the project was started; original contract finish date; and actual finish date. All summaries should contain the name, address, telephone, FAX number and e-mail address of a representative of the owner (as well as one alternate individual not affiliated with your firm) familiar with the offerors experience on the project that can verify the experience cited. Project examples may include past experience where the offeror was the prime teaming agent, a member of a teaming arrangement (i.e. joint venture), or prime construction contractor. Also indicate if the **construction with incidental desing were self performed for each of the major work elements of the project and where work was subcontracted list the scope subcontracted, name of the subcontractor and subcontracted dollar value**; joint venture, or if a sub-contractor accomplished effort. If a joint venture has been formed for this contract only, include a brief description of any previous experience of the team, working together.

7.1.1.2. Not Used

7.1.2. Evaluation

The offeror's experience in construction with incidental design of facilities similar to these requested projects (identified in Table 1) will be evaluated. Evaluation will be based on experiences included in the project summaries set forth in the proposals. Higher evaluation ratings will be given for those projects which are similar in scope and complexity to the projects expected to be performed pursuant to the task orders issued pursuant to these contracts. Recent experience means projects completed within the last five (5) years. In addition, those offers that include military construction projects similar in type and size will be rated more favorably than those without such experience. Projects meeting or exceeding the dollar threshold criterion in paragraph 7.1.1.1 above will be rated higher than those not meeting the minimum. Further, such characteristics as size, complexity, dollar value, the number and types of trades employed and whether the Federal Government or the military was the customer will be considered as indicia of similarity. Experience with vertical construction will be rated more favorably than horizontal (e.g. building vs. roads). Projects that are not yet complete will be rated lower than those that are complete. Omission of requested information will result in lower ratings. An offeror's experience will be evaluated in descending order of preference as follows (1) **projects construction with incidental design by a single entity offeror**; (2) projects constructed with incidental design by an offering joint venture or projects performed by an offering prime contractor/subcontractor team who together have previous construction with incidental design experience; (3) projects teaming arrangement by an offering prime contractor/subcontractor team without any previous construction with incidental design experience as a team.

7.2. TAB 2 – KEY PERSONNEL QUALIFICATIONS

7.2.1. Submission Requirements

In this tab, the proposer should present the names and resumes of key construction and design personnel that will be members of the proposed team. **As a minimum, this tab should include data on the following personnel: Design Project Manager, Construction Project Manager; Construction Superintendent; CQC System Manager; Contract Administrator; Manager/Operations Manager; and Site Safety and Health Officer.**

The resume shall include a summary of the proposed duties and responsibilities of these individuals, which clearly indicates separate duties and responsibilities for each individual. Resumes should be listed in reverse chronological order, with the latest experience listed first, and all time gaps on each resume fully explained. In addition, the educational qualifications and registrations of the proposed personnel should be submitted. The resume of the contract administrator/manager shall identify experience in invoice preparation, travel, subcontractor consent, audits, etc.

The proposal should clearly present the credentials of each person, and shall show that each possesses the attributes listed below. Resumes should include examples of project experience (including what capacity the individual served on each project), as well as the **dates (beginning**

and ending month/year) employed on each project, the monetary size of each project cited as experience and what work elements the person was responsible for. In addition, educational qualifications of the proposed personnel should be submitted. If, the individuals named in this proposal become unavailable, replacement personnel with the same or better skills and experience shall be presented for acceptance and approval by the Contracting Officer. As a minimum, the following information showing similar experience of its Key Personnel for each project should be provided:

- a. Name, Assigned Position, and Company this Key Person Worked for;
- b. Project title and location;
- c. Dollar value of construction (broken to show work the prime contractor performed and dollar value. This should thoroughly and clearly show self-performed and subcontracted work);
- d. Construction/Design period (month/year start to month/year end) referenced by key person;
- e. Brief description of how the projects worked on and explanation of how they are similar to the projects to be performed pursuant to this contract (See Table 1 – Specialized Work); and
- f. Current primary POC for the customer (name, relationship to project, agency/firm affiliation, city and state, e-mail, and phone number).

Prior experience on military fuels construction projects, construction with incidental design projects, and projects of projects included in Table 1 – Specialized Work is preferred and will be evaluated more favorably. The proposal should clearly present the credentials of each person, and shall show that each possesses the following qualifications and no individual may be designated more than one position:

- **Design Project Manager:** The minimum desired experience requirements for the Design Project Manager is: properly Registered Engineer or Architect with at least 5 years design experience or at least 5 years construction and construction management experience. A minimum of 2 of those 5 years with work described in Table 1 – Specialized Work for completed systems.
- **Construction Project Manager:** The minimum desired experience for the Construction Project Manager is: possesses a Bachelor's Degree in Engineering or Sciences, with a minimum of 5 years experience (within the last 10 years) in Construction Project Management. A minimum of 2 of those 5 years as experience, as a Construction Project Manager, in construction and installation of work described in Table 1 – Specialized Work for completed systems.

- **Construction Superintendent:** The minimum desired experience for the On-Site Project Superintendent is: 5 years construction related experience (within the last 10 years) as a superintendent on industrial construction projects with a minimum of 2 of those 5 years as experience, as a Construction Superintendent, with the construction of the installation of work described in Table 1 – Specialized Work.

- **Contractor Quality Control (CQC) System Manager:** The minimum desired experience for the CQC System Manager is either:

Possess a Bachelor's Degree in Engineering or Sciences with a minimum of 2 years experience (within the last 10 years), as a Construction CQC, in construction of the installation of work described in Table 1 – Specialized Work for completed systems.

Or

Have a minimum of 8 years construction experience (within the last 10 years) as a Construction CQC or Superintendent with a minimum of 2 of those 8 years as experience, as a Construction CQC, in construction of the installation of work described in Table 1 – Specialized Work for completed systems.

- **Contract Administrator:** The minimum desired experience for the Contract Administrator is either:

Possess a business related Bachelor's Degree with a minimum of five years contract administration experience (within the last 10 years) to include contract management, modification management, records management, subcontracting and reviewing contracts.

Or

Have a minimum of 8 years contract administration experience (within the last 10 years) to include contract management, modification management, records management, subcontracting and reviewing contracts.

- **Manager/Operations Manager:** The minimum desired experience for the Manager/Operations Manager is:

Possess a Bachelor's Degree in Architecture, Engineering, Sciences or Construction Management with a minimum of 5 years experience (within the last 10 years) as a Manager/Operations Manager of work described in Table 1 – Specialized Work.

- **Site Safety and Health Officer (SSHO):** The minimum desired experience for the SSHO is:

Completed the 30-hour OSHA Construction safety class or as an equivalent, 30 hours of formal construction safety and health training covering the subjects of the OSHA 30-hour course (See EM 385-1-1 Appendix A, paragraph 4.b) applicable to the work to be performed (**Table 1 – Specialized Work**) and given by qualified instructors. If the SSHO has the permitted equivalent training, an additional five (5) years of construction industry safety experience or three (3) years if the individual possesses a Certified Safety Professional (CSP) or safety and health degree.

If, after award, the key personnel identified in the proposal are not able to be utilized on this solicitation, replacement personnel with equal or better skills and experience shall be presented for acceptance and approval by the Contracting Officer. Replacement individuals for this solicitation shall be required to have qualifications and experience meeting or exceeding those identified in the proposal. The Contractor shall obtain the Contracting Officer's written consent before making any substitutions for these designated personnel.

7.2.2. Evaluation

Qualifications of design/construction personnel assigned to this project (construction with incidental design experience on past projects, design experience on past projects and professional registration) will be evaluated. More favorable evaluation ratings will be given for military fuels construction with incidental design experience, longevity of experience at the position being proposed and education. Prior experience on military fuels construction projects is preferred and will be evaluated more favorably. Lower evaluation ratings may be given when replacement of key construction personnel has not been acceptable to the owner or Contracting Officer and where the owner or Contracting Officer was not notified about replacement personnel. More favorable ratings are awarded if the key lead designers have previous experience with the Construction entity.

7.3. TAB 3 –SUBCONTRACTOR'S QUALIFICATIONS/EXPERIENCE WITH PRIME CONTRACTOR

7.3.1. Submission Requirements

Provide the name of the proposed subcontractors listed below, along with a brief resume (1 or 2 pages) for each company. Also, identify the proposed key personnel (including their roles and the subcontractor or Prime Contractor they work for) involvement with the projects by name, or identify if the work is to be self-performed (and list projects referenced, in Tab 1 that were previously self-performed). Include duration of experience working with Prime Contractor.

The proposal should contain the name and resume for one subcontractor for each trade subcontractor listed below. If more than one subcontractor will be used for the trade/

subcontract listed below, a second subcontractor for the trade/ subcontract listed below may be added if a statement explaining why the second sub-contractor is included. If the proposer will perform these services, state so, and provide information requested. Resumes should consist of a brief narrative of the company, presentation of relevant experience by the sub-contractor on similar projects (relevant experience is defined in Tab 1 above), and any other information pertinent to this project. In addition, indicate the DUNS number of the subcontractor on the resume. The Architect-Engineer Contract Administration Support System (ACASS) and/or Construction Contract Administration Support System (CCASS) ratings will be evaluated (by the government), if available, for the subcontractors and evaluated. For the construction contractor, if CCASS is not available, the contractor shall use Form DD2626 (See Attachment #1.a.). For the designer, if ACASS is not available the contractor shall use Form DD2631 (See Attachment #1.b.).

For project experiences cited with each subcontractor, indicate whether the identified subcontractor performed their designated duties or roles for the entire project contract or if they were replaced during the course of the project contract and the owner or Contracting Officer was notified about the replacement. If they were replaced, indicate whether they were replaced with subcontractors acceptable to the owner or Contracting Officer. If the subcontractor named in this proposal becomes unavailable, a replacement subcontractor with equal or better skills and experience shall be presented for acceptance and approval by the Contracting Officer.

- a. Fuel Designer.** The Offeror should demonstrate that the designer (otherwise known as "AE") has successful experience in design of specialized fuel systems (as requested in Tab 1 above).
- b. Mechanical [Hydrant Fuels/Pump House].** The Offeror should demonstrate that its subcontractor has successful experience in construction of specialized fuel systems (as requested in Tab 1 above).
- c. Electrical [Class I, Division I Fuels Experience].** The Offeror should demonstrate that its subcontractor has successful experience in completing Class I, Division I wiring around fueling systems (as requested in Tab 1 above).
- d. Steel Fuel Tank Rehabilitation.** The Offeror should demonstrate that its subcontractor has successful experience in rehabilitation of 5,000 barrel (as a minimum) or larger fuel storage tanks (as requested in Tab 1 above).
- e. System Supplier.** The proposed system supplier/installer should have been regularly engaged in Fueling Systems installation work for at least 5 years. The Offeror should provide a listing indicating that the system supplier has installed at least five similar Programmable Logical Controllers (PLC) based pump control systems for automatic cycling of pumps based upon varying dispensing demands utilizing multiple pumps

for dispensing jet fuel into aircraft in the last 5-year period (including start-up dates). The Offeror should provide locations and dates for all of the listed systems and list of materials supplied on each of the listed systems that have successfully operated over the last three years and are still currently in service.

7.3.2. Evaluation

Higher evaluation ratings may be awarded for past experience with similar projects as defined in Tab 1, and those constructed within the last 5 years. Self-performed or subcontractor with previous experience with the Prime Contractor will be evaluated more favorably.

7.4. TAB 4 - PAST PERFORMANCE, CONSTRUCTION

7.4.1. Submission Requirements

a. Past Performance Ratings:

The CCASS ratings of the construction entity of the offerors will be evaluated (by the government), if available. For the construction entity, if CCASS is not available the offeror shall use Form DD2626 (See Attachment #1.a.). For projects cited in Tab 1 which were constructed for other government entities, submit the performance appraisal sheets used by that government entity. DD2626 shall be completed by an owner or owner's representative and not affiliated with the offeror. If an offeror has no past performance ratings in CCASS, or other Construction Performance Rating System used by other government owners and no Performance Evaluation information is available for Non-Government work, a neutral rating will be given.

For incidental design components: For a joint venture (see Paragraph 8) where an AE is part of the team, ACASS ratings will be evaluated (by the government), if available. For the AE, if ACASS is not available the offeror shall use Form DD2631 (See Attachment #1.b.). For projects cited in Tab 1 which were constructed for other government entities, submit the performance appraisal sheets used by that government entity. DD2626 shall be completed by an owner or owner's representative and not affiliated with the offeror. If an offeror has no past performance ratings in ACASS, or another performance rating system used by other government owners and no Performance Evaluation information is available for Non-Government work, a neutral rating will be given.

The government reserves the right to obtain copies of all ACASS and/or CCASS records contained in the Corps of Engineers ACASS and/or CCASS databases.

Copies of records contained in the Corps of Engineers ACCASS/CCASS database may be requested by offerors by:

(1) Accessing past performance information directly from the Past Performance Information Retrieval System (PPIRS) at <http://www.ppirs.gov>. PPIRS is an electronic repository of performance information collected by all the major federal performance reporting systems. Logging onto PPIRS will require the following:

All firms must have purchased and installed a Public Key Infrastructure (PKI) certificate. If you do not have this certificate, you cannot access your information. Additional information about the PKI certificate is posted in red at the top, center portion, of the <http://www.ppirs.gov> web page.

You will also need your DUNS number and Marketing Partner Identification Number (MPIN) to log onto PPIRS. The MPIN number was selected by whoever registered your firm in the Central Contractor Registry at <http://www.ccr.gov>. If you do not know your MPIN number, you will need to contact the CCR help desk by emailing them from the email link on the <http://www.ccr.gov/help.asp> web page. Please be aware that they will only release the MPIN number to the person who originally registered your firm.

(2) Contact your government point of contact for the project you mentioned, and ask them if they can send you a copy, or

(3) Apply for “Contractor Corporate Senior Management Representative” access on the following CCASS / ACASS web page: <http://cpars.navy.mil/accessforms/userforms.htm>. This type of access is issued to only one person within the firm, typically a member of senior management. In addition to access to your completed CCASS / ACASS performance evaluations, you will also be able to view status of evaluations which have not yet been completed. Following receipt of your faxed application request, you will be emailed a logon and access instructions. This type of access will only let you see CCASS / ACASS information, so it is not as complete as PPIRS access which allows access to evaluations prepared by non-DOD federal agencies, as well as the DOD agencies which use CCASS / ACASS. Be aware that you will also need to have a PKI certificate to access the CCASS / ACASS system. This is a DOD requirement.

b. Project Management, Contract Management and Project Coordination

The offeror should provide a typical Project Management Plan (PMP) developed specifically for projects cited in Tab 1 that would also be typical of future task orders. The PMP should include an explanation of the management approach for the design/construction team, clearly showing how the prime contractor will manage both the design and construction of the project to insure a well-coordinated quality product, completed on time and with a minimum amount of contract modifications. The Management Approach should address the interaction between the design and construction entities both during the design phase and the construction phase of the project. The PMP should also include the method of management of all sub-contractors, schedule

development and methods to be utilized to keep the project on schedule, acquisition of environmental permits in a timely fashion, preparation and submission of As-Built documents upon construction completion, and contract close-out. The information in the PMP should make it clear that the offeror has the ability to deliver a quality product and effectively manage all subcontractors on the team, as well as the ability to coordinate all work throughout the construction phase. As a minimum, the PMP should address all of the following:

- Management Approach, including any special work restrictions or phasing
- Contract Administration/Contract Management
- Sub-Contractor Management
- Schedule development and procedures to keep the project on schedule
- Design and material submittals
- Project coordination with USACE and the installation
- Acquisition of Environmental and other permits
- Preparation and submission of As-Built documents
- Contract close-out

7.4.2. Evaluation

a. Past Performance Ratings:

The evaluation of past performance will examine how well offerors have performed on previous projects considering such criteria as quality, timeliness, safety, responsiveness to customer concerns, and adherence to budget. Higher evaluation ratings may be awarded for “Exceptional” evaluations. In descending order, lower ratings may be given for past evaluations of “Above Average”, “Satisfactory”, “Marginal”, and “Unacceptable”. If an offeror has no past performance ratings in ACASS/CCASS, Performance Evaluation Worksheets, or other Design/Construction Performance Rating Systems, a neutral rating will be given. ACASS/CCASS Ratings will be given more weight than equivalent performance ratings for other types of evaluations. The Government may, at its discretion, contact references cited to verify the information contained therein. The Government will evaluate the relative merits of each offeror's past performance. The Government reserves the right to consider all aspects of an offeror's performance history, but will attribute more significance to work that was similar in nature, magnitude, and complexity to the projects described in this solicitation. Satisfactory or better past performance on projects involving construction and completed system start-up of a fueling system with attributes similar to those specified in Tab 1 will be evaluated favorably.

b. Project Management, Contract Management and Project Coordination

The quality of the offeror's PMP will be evaluated. Higher evaluation ratings will be achieved for a PMP which addresses all items requested in a thorough and comprehensive manner, and

that demonstrates an effective plan for design, construction, contract management and project coordination and close-out of projects cited in Tab 1 and typical for future task orders. The PMP of the successful proposer will be forwarded to the Corps of Engineers Construction Office, and used for your work (enforced) during construction with incidental design operations.

7.5. TAB 5 – SAMPLE PROBLEM-TECHNICAL APPROACH

7.5.1. Submission Requirements

Assume that the project will be located at Grand Forks AFB, North Dakota. **Worksheets describing the project scope, its duration etc. are located in Attachment 2 of this section.** Attachment 3 is the applicable Davis-Bacon wage decision (ND080002, Highway, dated 09/25/2009 and ND080014 Heavy, dated 09/05/2008) for the hypothetical project at Grand Forks AFB, ND. The covered area is Grand Forks, ND-MN, SMSA-2985, of which Grand Forks Co., ND, is a part. Minority percentage is 1.2%. Female percentage is 6.9%. These wage rates are provided for the Pricing Form. These wage rates will not be reissued in case of a wage rate change.

For Attachment 2 – Sample Problem, provide the following:

- a. Describe your concept for design (limit 6 pages)
- b. Describe your submittal review and approval process (limit 2 pages)
- c. Describe or show your construction plan. (limit 6 pages)
- d. Provide 11X17 sketch or plan view of your concept layout for the off-load portion of the project (limit 1 page)
- e. Provide outline or summary for your Quality Assurance Plan (limit 4 pages)
- f. Provide outline or summary for your Safety and Health Plan. (limit 4 pages)
- g. Provide outline or summary of your process and steps for commissioning/acceptance by government and project closeout. (limit 6 pages)
- h. Provide realistic construction schedule at Work Breakdown Structure (WBS) level 3. Assume task order award 1 June 2010. (limit 3 11X17 pages)

Design and Cost Estimates: Offerors are required to submit a price proposal. Contractors **MUST** complete and submit the following items:

Detailed information showing cost accounts included in each of their overhead pools, e.g. labor burden (fringes), general and administrative, field overhead, and any other pools. The composition of the cost factor upon which the overhead is distributed shall also be shown. An example of a general and administrative expense rate computation is listed below and may be used as a guide. Note that the list is not inclusive of all allowable or unallowable costs.

Sustainment, Rehabilitation And Modernization (SRM)
And Unspecified Military Construction (UNMC)-
Funded Construction in Support of Facility Infrastructure
For POL Operations
**VARIOUS LOCATIONS IN THE CONTINENTAL
UNITED STATES (CONUS), ALASKA AND HAWAII**

W9128F-09-R-0082

Indirect Salaries	\$100,000	Bad Debts	-0- *
Officers' Salaries	85,000	State Income Taxes	<u>7,500</u>
Payroll Taxes	9,500	Total G&A Expense	\$287,700
Insurance	14,500		=====
Rent	35,000	Total Direct Labor	\$3,000,000
Utilities	14,000	Add Labor Burden @ 35%	1,050,000
Repairs & Maint.	6,500	Other Direct Costs	<u>3,000,000</u>
Interest Expense	-0- *	Total	\$7,050,000
Advertising	-0- *		=====
Office Supplies	1,500	Percentage Computation	
Personal Property Taxes	2,200		\$ 287,700 (G&A Exp)
Contributions	-0- *		-----
Depreciation Office Equip	8,500		- = 4.08% \$
Legal Fees	3,500		\$7,050,000 (Base)

* Examples of unallowable costs in accordance with FAR Part 31. All costs unallowable by FAR Part 31 should be removed from overhead pools before computation of the submitted rate.

7.5.2. Evaluation

The sample problem will be evaluated based upon the offeror's understanding, realism and approach in working with a fuels project on a military installation. Pages which exceed the page limitations indicated will not be evaluated. Complete submission of all of the requested items may be evaluated more favorably.

7.6. TAB 6 – EXHIBIT DOCUMENTS

7.6.1. Submission Requirements

- Provide Copy of Client accepted final Safety and Health Plan for one of the example projects (Tab 1) that is representative of the Safety and Health Plan that will be provided for future task orders. If needed, provide an outline supplemental Safety and Health Plan requirements that will typical for future task orders. The Safety and Health Plan should ensure that the accident prevention plan is job-specific and addresses any unusual or unique aspects of the project or activity in which it is written; complies with USACE EM 385-1-1 and applicable federal, state, and local laws, ordinances, criteria, rules and regulations; provides adequate worker safety training; considers the Prime Contractor the controlling authority for all site safety and health of the subcontractors and making sure that all subcontractors understand the safety provisions under the contract, along with penalties for noncompliance; coordinates work between crafts so that interferences and hazardous working conditions are prevented; and inspecting subcontractor operations to ensure accident prevention responsibilities are being carried out.
- Copy of Client accepted final Quality Control plan for one of the example projects (Tab

1) that is representative of the Quality Control Plan that will be provided for future task orders. If needed, provide an outline of supplemental Quality Control Plan requirements that will be typical for future task orders. The Quality Control Plan should insure the ability to provide a well-coordinated quality product and ability to maintain quality of work during construction and design.

- Copies of the Prime or Joint-Venture (JV) Experience Modification Rating (EMR) rating reports from the contractors' insurance company (s) for the last three years. Also include EMR ratings for major subcontractors previously identified in your proposal for Tab 3. Any subcontractor where EMR rating is not available, provide a justifiable explanation as to why it is not available.

7.6.2. Evaluation

The Safety and Health Plan will be evaluated based on actual example projects (Tab 1) Client Accepted Final Safety and Health Plans along with outline supplemental requirements that represent the Safety and Health Plans that will be implemented on future task orders. Higher evaluation ratings will be achieved for a Health and Safety Plan which addresses all items requested in a thorough and comprehensive manner, and that demonstrates an effective plan for maintaining health and safety during design, construction, and close-out of for the example project and subsequent sample project and typical for Task Orders.

The Quality Control Plan will be evaluated based on actual example projects (Tab 1) Client Accepted Final Quality Control Plans along with outline supplemental requirements that represent the Quality Control Plans that will be implemented on the sample project and typical for future task orders. Higher evaluation ratings will be achieved for a Quality Control Plan which addresses all items requested in a thorough and comprehensive manner, and that demonstrates an effective plan for maintaining quality during design, construction, and close-out of for the example project and subsequent future Task Orders.

The Contractor and major subcontractors EMR will be evaluated. EMR ratings less than 1.0 will be evaluated more favorably. A neutral rating will be given to any unavailable subcontractor rating that has an acceptable justifiable explanation.

7.7. TAB 7 – UTILIZATION OF SMALL BUSINESS CONCERNS

See paragraphs: **Submission Requirements - Small Business and Submission Requirements - Other Than Small Business Concerns** below.

7.7.1. General Information

7.7.1.1. Eligibility requirements for participating as a member of the Small Business Community (SBC)

(1) To be eligible for membership, a concern must represent itself as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or woman-owned small business concerns.

(2) To represent itself as a member of the SBC, the concern must meet the appropriate definition as indicated at the solicitation clause 52.219-8 Utilization of Small Business Concerns and documented at Federal Acquisition Regulation (FAR) Parts 2.1 and 19.001.

7.7.1.2. Definitions:

(1) **Small Business Concern** means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 213 CFR Part 121 – Small Business Size Regulation. The term, hereafter referred to as the “**Small Business Community (SBC)**”, encompasses the following members:

- a. Small Business Concern (SB)
- b. Small Disadvantaged Business Concerns (SDB)
- c. Historically Underutilized Business Zone SB (HubZone)
- d. Service-Disabled Veteran Owned SB (SDVOSB)
- e. Veteran Owned SB (VOSB)
- f. Woman owned SB (WOSB)
- g. Historical Black Colleges & Minority Institution (HBCU/MI)

(2) **Other than Small Business Concerns** are all other entities including Large Business Concerns, State and local governments, Non-profit organizations, Public Utilities, Educational institutions and foreign-owned firms that are awarded federal contracts for performance within the United States.

(3) **Prime Contractor** for the purpose of this solicitation refers to Small Business Community members and “Other than Small”

(4) “**Small Business Subcontracting Goals**” represents the minimum level for small business performance in the indicated small business category.

(5) **Subcontract** means any agreement (other than one involving an employer-employee

relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(6) **Good Faith Effort** entails evidence that an “Other than Small” concern has provided maximum practicable opportunity for SBC members by complying with its subcontracting plan, subcontracting responsibilities with supporting documentation prescribed by 13 CFR §125.3 – Subcontracting assistance.

(7) **Contractor Team Arrangements** as used in this solicitation, resultant proposals and contracts means an arrangement in which (1) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or (2) A potential prime contractor agrees with one or more other companies to have them as its subcontractor for the requirement indicated in this solicitation.

7.7.1.3. Contractor Team Arrangements

The Contracting Officer will recognize the integrity and validity of contractor team arrangements; provided, the arrangements are identified and company relationship are fully disclosed and validation of formal agreements and relationships (e.g., Mentor-Protégé agreements, joint-ventures, partnerships, etc) are provided in the offer and submitted with the proposal responding to the solicitation. Nothing in the solicitation authorizes contractor team arrangements in violation of antitrust statutes or limits the Government’s rights to:

- (1) Require consent to subcontracts (FAR Subpart 44.2)
- (2) Determine, on the basis of the stated contractor team arrangement, the responsibilities of the prime contractor
- (3) Provide to the prime contractor data rights owned or controlled by the Government.
- (4) Pursue its policies on competitive contracting, subcontracting, and component breakout and initial production or an any other time; and
- (5) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

7.7.1.4. Joint Ventures

The Joint-Venture Entity must be registered in Central Contract Registration database at www.ccr.gov.

Contact your assigned Business Opportunities Specialist, Business Development Division at your Servicing SBA District Office for detailed information regarding SBA's requirements.

7.7.2. Submission Requirements - Small Business

Small Business Concerns are not required to submit information for Factor 7- UTILIZATION OF SMALL BUSINESS CONCERNS. If the offeror is a Small Business Concern, this tab should include a single sheet stating that the contractor is a Small Business Concern, the category of Small Business, and their business size classification based on the NAICS code and size standard as listed in Section 00 21 00 of the solicitation. If offeror is a Small Business joint-venture, submit a copy of the Contractor Team Arrangement as described above. Additional information identified below concerning Other Than Small Business Concerns need not be provided.

7.7.3. Submission Requirements - Other Than Small Business Concerns

All proposers other than Small Business Concerns should demonstrate how they plan to identify, commit, and utilize the Small Business Community as team members, subcontractors and/or suppliers in the performance of the resultant contract and provide assurance that small business concerns will have maximum subcontracting opportunities. The offer should clearly state factors that demonstrate a strong commitment to use small business concerns. The following information shall be submitted for Factor 7:

(1) Subcontracting Goals: "Other than Small Business" offerors are required to develop and identify percentage goals based on planned subcontracting that are challenging yet realistic. Proposers shall identify their goals for the contracts resulting from this solicitation. The U.S. Army Corps of Engineers considers the following goals reasonable and achievable for the performance of the resultant contract:

The small business informational subcontracting goal objectives for this solicitation or request for proposal are based on a percentage of the proposed contract total value rather than a percentage of the subcontracting amount as indicated in FAR clause 52.219.9, Subcontracting Plan.

- (i) 70 % of subcontracted amount contract amount with small business concerns.
- (ii) 6.2 % of subcontracted amount contract amount with those small business concerns owned and controlled by socially and economically disadvantaged individuals.
- (iii) 7.0 % of subcontracted amount contract amount with those small business concerns owned

and controlled by women.

(iv) 0.9 % of subcontracted amount contract amount with those small business concerns owned and controlled by Service-Disabled Veterans.

(v) 9.8 % of subcontracted amount contract amount with those small business concerns owned and controlled by HUBZones.

(vi) 0.0% of planned subcontracting dollars to be placed with historical black colleges and universities/minority institutions (HBCU/MI).

(2) Mitigation Plan: “Other than Small Business” offerors should identify efforts that will be made to mitigate the effects of full and open competition on small business concerns. Specific examples of mitigation efforts via subcontracting include (but are not limited to):

- Formal teaming agreements with small businesses

- Formal Mentor-Protégé agreements

- Exceeding the small business subcontracting goals stated above in the sub-factor
SUBCONTRACTING GOALS

- Applying small business subcontracting goals toward actual dollars awarded rather than a percentage of subcontracting dollars

- Ensuring original small business team members have substantial subcontracting opportunities and preferences throughout the life of the contract.

- Assurances that all members of the Offeror’s team understand the rules, regulations and procedures governing the review of subcontracting plan, subcontracting reporting, and subcontracting compliance audits

- Ensuring periodic review of small business subcontracting plan compliance

Offerors are encouraged to utilize the Central Contractor Registration’s Dynamic Small Business Search (formerly the Small Business Administration’s “Pro-Net” database). The U.S. Small Business Administration, the Department of Defense, the Office of Management and Budget and the General Services Administration have taken steps to simplify the federal contracting process by creating an integrated database of small businesses that want to do business with the government. The integration of Pro-Net and DOD’s Central Contractor Registration (CCR) database has created one portal for entering and searching small business sources. The Dynamic Small Business Search web address, <http://www.ccr.gov>. Similar to the defunct “Pro-Net”, the Dynamic Small Business Search is an internet based database of information on small business concerns.

(3) Utilization of Small Business Concerns: “Other than Small Business” offerors should propose their plan for meeting the small business goals stated above, utilizing small business concerns as team members, subcontractors, and/or suppliers in the resulting contract (FAR Clause 52.219-8, Utilization of Small Business Concern (May 2004)).

(4) Past Performance in Utilization of Small Business Concerns. “Other than Small” offerors should demonstrate the extent to which applicable goals for small business participation under contracts that required subcontracting plans were met or exceeded (15 U.S.C 637(d)(G)(ii)) (FAR Clause 52.219-9 – Small Business Subcontracting Plan). Data submitted should demonstrate overall small business past performance within the last 5 years on government contracts of a similar nature. The data submitted should demonstrate small business performance for goals in each of the aforementioned small business category (SB, SDB, WOSB, HUBZone, SDVOSB, VOSB, & HBCU/MI). As a minimum data should include:

- Name of the Client/Customer
- The Contract Number and/or Identification Number
- Project Description
- Contract Amount
- Project/Program Manager or Point of Contact with address and telephone number.
- Subcontracting Compliance Review/Audit Reports (authentication and verification of subcontracting compliance review by a federal agency such as the Small Business Administration, the Defense Contract Audit Agency, or the U.S. Army Corps of Engineers).
- Standard Form 294, Subcontracting Report for Individual Contracts and Standard Form 295, Summary Subcontract Report
- Other relevant documentation that may include citations, awards, letters of accommodation, etc. that demonstrate successful past performance with utilization of small business concerns.

7.7.4. Evaluation

7.7.4.1. Small Business

Small business concerns will receive the highest evaluating rating under TAB 7 UTILIZATION OF SMALL BUSINESS CONCERNS.

7.7.4.2. Other Than Small Business

Other than Small Offerors will be formally evaluated for the following sub-factors, evaluated in descending order of importance: Subcontracting Goals, Mitigation Efforts, Utilization of Small Business Concerns, and Past Performance in Utilization of Small Business Concerns.

(1) Subcontracting Goals: The target goals suggested in this solicitation are considered to be minimum requirements and for information purposes only. A more favorable evaluation rating may be given for exceeding the suggested minimum requirement, provided the proposed goals are challenging, realistic, obtainable, and demonstrate a strong commitment to the utilization of small business concerns.

(2) Mitigation Plan: Offerors who propose innovative and effective mitigation strategies in small business subcontracting will receive a more favorable evaluation than Offerors who merely meet the Government's minimum requirements.

(3) Utilization of Small Business Concerns: Offerors will be evaluated on their proposed utilization and participation of small business concerns as team members, subcontractors, and/or suppliers in the resulting contract. The Offerors will be evaluated on their commitments that small business concerns will have maximum subcontracting opportunities. Enforceable commitments to use small business concerns will receive more favorable evaluations than non-enforceable commitments.

(4) Past Performance in Utilization of Small Business Concerns: Offeror's past performance in establishing and achieving realistic yet challenging goals on recent contracts of a similar nature will be evaluated. Offerors who have recently established and achieved higher goals in their small business past performance will be evaluated more favorably.

7.8. TAB 8 – PRICING

7.8.1. Submission Requirements

7.8.1.1. CLIN Pricing Schedule

Offerors are required to submit a price proposal for the Fuels Labor Disciplines including the General and Administrative (G&A) expense rate(s) of both the design and construction agents that may be used on task orders and modifications during the basic ordering period of these contracts. Offerors are also required to submit proposed design and construction base hourly and fully loaded labor rates that will be used on all task orders and modifications during the option periods of these contracts.

Offerors are also required to submit the general and administration expense rate computations and method of allocation used in each of the last two years. Offerors shall identify and explain any changes between the G&A rate(s) and methods of allocation used in the last two years and rate(s) and method(s) of allocation proposed in response to this solicitation.

Contractors **MUST** complete and submit the following items:

- a. CLIN Pricing Schedule for Firm Fixed Price Task Orders.
- b. G&A Expense Rates Computations and method of allocation used in each of the last two years and explain any changes between those used in the last 2 years and in response to this solicitation.
- c. Offerors are also required to provide escalation factors for design and construction labor costs for the three year option period.

7.8.1.2. Sample Problem Pricing

For Attachment 2 – Sample Project provide design and construction estimates (not page limited) (Printed copy plus Working Microsoft Excel file on CD-ROM).

7.8.2. CLIN Pricing Schedule Instructions

Offerors are required to submit pricing information in the form of proposed “fully loaded” hourly rates for design disciplines and construction tradesmen. The proposed hourly rates for listed design disciplines will be contractually binding (maximum rates) upon the offeror for task orders and modifications awarded during the basic ordering and option periods of these contracts. Offerors will also be required to propose “fully loaded” hourly labor rates for listed construction trades. These proposed rates will also be contractually binding (maximum rates) upon the offeror for task orders and modifications awarded during the basic ordering period and option periods of the contract, unless the proposed rates are lower than the Department of Labor Wage Decision Rates (Davis-Bacon) rates contained in specific task order RFPs. The rates may be submitted lower in RFP task orders issued under the contracts.

If “Other Costs” are indicated provide description as to what they are and how and when are they will be applied in proposals.

7.8.3. Section 00 45 00, Representations, Certifications and Other Statements of Offerors.

These items are not considered for evaluation, but are required as part of the offeror’s proposal of this solicitation. The information requested in this Section needs to be fully completed along with completion of Online Representations and Certifications Application (ORCA) per FAR 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS. The submitted information will be reviewed for completeness by Contracting Personnel.

7.8.4. Evaluation.

7.8.4.1. CLIN Pricing Schedule

Price will be evaluated for affordability and reasonableness, lower overhead rates and methods of allocation that are more advantageous to the government will be evaluated more favorably.

7.8.4.2. Sample Problem Pricing

Attachment 2 – Sample Problem pricing will be evaluated for reasonableness and how well the offeror understands a typical fuels project.

8. JOINT VENTURES

No contract may be awarded to a joint venture that is not registered in the Central Contractor Register (CCR). Joint ventures may register in the following way:

8.1. REGISTERED IN CCR

The firm that will be the recipient of payments should be registered in the CCR and have a DUNS number. This firm is considered in the CCR to be the “mother firm.” If no money is to go to any other firm in the joint venture, the mother firm may make the other firm in the joint venture a “child.” This child will be assigned the mother firm’s CCR number with an additional four (4) numbers attached. Since the child firm is not receiving any payments, they do not need to get a DUNS number. HOWEVER, in order to cover all possibilities, it might be advisable to have each firm registered in the CCR.

8.2. CONTACT DUNN & BRADSTREET

DUNS & Bradstreet phone number is 1-800-333-0505. See Section 00 21 00 INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS for CCR Registration requirements.

8.3. NEW COMPANY

If the joint venture has a newly created name, then it must have its own DUNS number and register as such in the CCR.

8.4. CONTACT INFORMATION

In the cover letter of your proposal, provide the complete names, addresses, and phone and fax

numbers of the two firms in the joint venture.

8.5. SIGNATURE REQUIREMENTS

SF 1442, SOLICITATION, OFFER, AND AWARD (pages 00010-1 and 00010-2), Block 20 requires that the name and title of the person authorized to sign the offer for the joint venture be provided.

8.6. CORPORATE CERTIFICATE

Ensure that joint-venture portion is completed by both firms.

8.7. JOINT VENTURE REQUIREMENTS

In the case of a joint venture, the following is required: A contract with joint ventures may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner prescribed below for each type of participant. When a corporation is participating, the Contracting Officer shall verify that the corporation is authorized to participate in the joint venture.

8.7.1. Individuals

A contract with an individual shall be signed by that individual. A contract with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's types, stamped, or printed name and the words "an individual doing business as" [insert name of firm].

8.7.2. Partnerships

A contract with a partnership shall be signed in the partnership name. Before signing for the Government, the Contracting Officer shall obtain a list of all partners and ensure that the individual(s) signing for the partnership have authority to bind the partnership.

8.7.3. Corporations

A contract with a corporation shall be signed in the corporate name, followed by the word "by" and the signature and title of the person authorized to sign. The Contracting Officer shall ensure that the person signing for the corporation has authority to bind the corporation.

8.7.4. Single Point of Contact

In addition to the requirements stated above, and to assure a single point of contact for resolution

of contractual matters and payments, the Contracting Officer shall obtain a certificate signed by each participant in the joint venture as follows: In the proposal include the following statement: "The parties hereto expressly understand and agree as follows:

- a. **(name, title, and company)** is the principal representative of the joint venture. As such, all communications regarding the administration of the contract and the performance of the work thereunder may be directed to him or her. In the absence of **(same name, title, and company), (enter name, title, and company of alternate)** is the alternate principal representative of the joint venture.
- b. Direction, approvals, required notices, and all other communications from the Government to the joint venture, including transmittal of payments by the Government, shall be directed to **(enter name, title, and company of principal)**, principal representative of the joint venture."

9. COMPETITIVE RANGE

Upon completion of initial proposal evaluation, if discussions are needed the Government may establish a competitive range for the purpose of conducting written discussions. The competitive range shall be determined on the basis of the factors stated in the solicitation and shall include all of the most highly rated proposals, unless the range is reduced for reasons of efficiency. The Comptroller General Decisions indicate that all content of discussions are a matter within the Contracting Officer's judgment. Discussions involve an exchange of information essential to determining the acceptability of a proposal. During discussions, offerors must be informed of all deficiencies, significant weaknesses, or adverse past performance information to which they have not had the opportunity to respond, and offered an opportunity to revise their proposals. No technical leveling, transfusion or auction techniques shall result from discussions. Discussions will be concluded as of the date specified for receipt of a Final Revised Proposal from those offerors determined to be in the competitive range.

The Government intends to award up to four contracts on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. Notwithstanding, the Government may conduct written discussions with all responsible offerors who submit proposals and who are considered within the competitive range. Offerors submitting proposals determined outside of the competitive range (not among the most highly rated) will be notified in writing at the earliest practicable time.

10. COMMUNICATIONS

For definitions of Evaluation terms referenced below, see paragraph 6.4 above.. The information provided in this paragraph includes procedural information associated with clarifications and discussions.

a. Clarifications. During the evaluation, if a proposal requires clarification for the Board to complete its evaluation, a written list of questions and/or comments will be provided to the offeror by the Contracting Representative or Contracting Officer. Any request for clarifications will be issued by letter. Contractors will not be permitted to change their proposals in response to a request for clarifications. All contact with offerors will be through the Contracting Division. There will be no direct contact by the SSEB with any offeror(s).

b. Communications. Communications as defined in paragraph 6.4 above, between the Government and offerors, after receipt of proposals, leading to establishment of the competitive range, will not occur without the participation of the Contracting Officer.

c. Discussions. If discussions, as defined in paragraph 6.4 above are necessary, written and/or verbal, they will be conducted with all firms in the competitive range once a written Determination to hold such discussions has been approved by the Contracting Officer. FAR 15.306(d)(3) and the Comptroller General Decisions indicate that all content of discussions are a matter within the Contracting Officer's judgment. Discussions involve an exchange of information essential to determining the acceptability of a proposal. During the exchange of information, offerors must be informed of all deficiencies and significant weaknesses in their proposals and offered an opportunity to revise their proposals. No technical leveling, transfusion or auction techniques shall result from discussions. Discussions will be concluded as of the date specified for receipt of a Final Revised Proposal from those offerors determined to be in the competitive range in accordance with FAR 15.306(c)(2).

11. FINAL PROPOSAL REVISIONS

If discussions are held, upon their completion, the Government shall issue to all Offerors within the competitive range a request for final proposal revisions specifying the exact date and time for submission of the revision. Any verbal revisions to proposals made during the course of discussions must be included in the offeror's written Final Revised Proposal. Any verbal revisions not included in the final revision will not be considered in re-evaluating the proposals. Any verbal request for a Final Revised Proposal shall be confirmed in writing. The confirmation shall include:

- (1) Notice that discussions are concluded.
- (2) Notice that this is the opportunity to submit a Final Revised Proposal.
- (3) Establishment of a common cutoff date and time that allows the offerors reasonable opportunity for submission of written Proposal revisions.
- (4) Notice that Proposal Revisions, and modifications thereto, must be received by the date, time, and in the place specified in the notice, or they are subject to the Late Offers provision in the solicitation in Section 00 21 00.

Following the evaluation of final proposal revisions, the Government will select the up to the top four offeror(s) whose initial and final proposal revision presents the Best Value and is most advantageous, considering only the factors included in the solicitation, to the Government.

12. AWARD OF CONTRACT

The Government will award up to four contracts resulting from this solicitation to the responsible offeror(s) whose proposal conforms to the solicitation and represents the best value to the Government, cost and other factors considered.

13. DEBRIEFING

Each offeror, successful or unsuccessful, will have the opportunity, in accordance with Federal Acquisition Regulation (FAR) 15.505 and 15.506, to receive one debriefing. Offerors are required to submit a written request for debriefing and discussion of the evaluation of its proposal within three (3) calendar days after receipt of exclusion from competition or notice of award. The debriefing of all offerors, successful or unsuccessful, will be conducted by the Contracting Officer in accordance with the FAR. Each offeror shall be provided only one debriefing, either post award or pre-award, at their choosing. The Contracting Specialist will coordinate and schedule the debriefings. Debriefing participation will include the Contracting Officer, chairperson of the SSEB, and Contracting Specialist with additional support from other members of the SSEB as required. The Contracting Officer will conduct the debriefings.

This page was intentionally left blank for duplex printing.

ATTACHMENT 1

BLANK PERFORMANCE EVALUATION SHEETS

Attachment 1.a - DD Form 2626: Performance Evaluation (Construction) for use in Tab 5 for all Tab 1 projects for which no other evaluation forms exist

Attachment 1.b - DD Form 2631: Performance Evaluation (Architect-Engineer) for use in Tab 5 for all Tab 1 projects for which no other evaluation forms exist

Equivalent Ratings

Outstanding = Exceptional.

Above Average = Very Good

Average = Satisfactory

Marginal

Unacceptable = Unsatisfactory

This page was intentionally left blank for duplex printing.

FOR OFFICIAL USE ONLY (WHEN COMPLETED)

PERFORMANCE EVALUATION (CONSTRUCTION)		1. CONTRACT NUMBER 2. CEC NUMBER	
IMPORTANT: Be sure to complete Part III - Evaluation of Performance Elements on reverse.			
PART I - GENERAL CONTRACT DATA			
3. TYPE OF EVALUATION (X one) ☐ INTERIM (List percentage _____%) ☐ FINAL ☐ AMENDED		4. TERMINATED FOR DEFAULT ☐	
5. CONTRACTOR (Name, Address, and ZIP Code)		6.a. PROCUREMENT METHOD (X one) ☐ SEALED BID ☐ NEGOTIATED b. TYPE OF CONTRACT (X one) ☐ FIRM FIXED PRICE ☐ COST REIMBURSEMENT ☐ OTHER (Specify)	
7. DESCRIPTION AND LOCATION OF WORK			
8. TYPE AND PERCENT OF SUBCONTRACTING			
9. FISCAL DATA	a. AMOUNT OF BASIC CONTRACT \$	b. TOTAL AMOUNT OF MODIFICATIONS \$	c. LIQUIDATED DAMAGES ASSESSED \$
10. SIGNIFICANT DATES	a. DATE OF AWARD	b. ORIGINAL CONTRACT COMPLETION DATE	c. REVISED CONTRACT COMPLETION DATE d. DATE WORK ACCEPTED
PART II - PERFORMANCE EVALUATION OF CONTRACTOR			
11. OVERALL RATING (X appropriate block) ☐ OUTSTANDING ☐ ABOVE AVERAGE ☐ SATISFACTORY ☐ MARGINAL ☐ UNSATISFACTORY (Explain in Item 20 on reverse)			
12. EVALUATED BY			
a. ORGANIZATION (Name and Address (Include ZIP Code))		b. TELEPHONE NUMBER (Include Area Code)	
c. NAME AND TITLE	d. SIGNATURE		e. DATE
13. EVALUATION REVIEWED BY			
a. ORGANIZATION (Name and Address (Include ZIP Code))		b. TELEPHONE NUMBER (Include Area Code)	
c. NAME AND TITLE	d. SIGNATURE		e. DATE
14. AGENCY USE (Distribution, etc.)			

DD FORM 2626, JUN 94

EXCEPTION TO SF 1420 APPROVED BY GSA/IRMS 6-94

Reset

FOR OFFICIAL USE ONLY (WHEN COMPLETED)**PART III - EVALUATION OF PERFORMANCE ELEMENTS**

N/A = NOT APPLICABLE O = OUTSTANDING A = ABOVE AVERAGE S = SATISFACTORY M = MARGINAL U = UNSATISFACTORY

15. QUALITY CONTROL							16. EFFECTIVENESS OF MANAGEMENT						
N/A	O	A	S	M	U	N/A	O	A	S	M	U		
a. QUALITY OF WORKMANSHIP						a. COOPERATION AND RESPONSIVENESS							
b. ADEQUACY OF THE CQC PLAN						b. MANAGEMENT OF RESOURCES/ PERSONNEL							
c. IMPLEMENTATION OF THE CQC PLAN						c. COORDINATION AND CONTROL OF SUBCONTRACTOR(S)							
d. QUALITY OF QC DOCUMENTATION						d. ADEQUACY OF SITE CLEAN-UP							
e. STORAGE OF MATERIALS						e. EFFECTIVENESS OF JOB-SITE SUPERVISION							
f. ADEQUACY OF MATERIALS						f. COMPLIANCE WITH LAWS AND REGULATIONS							
g. ADEQUACY OF SUBMITTALS						g. PROFESSIONAL CONDUCT							
h. ADEQUACY OF QC TESTING						h. REVIEW/RESOLUTION OF SUBCONTRACTOR'S ISSUES							
i. ADEQUACY OF AS-BUILTS						i. IMPLEMENTATION OF SUBCONTRACTING PLAN							
j. USE OF SPECIFIED MATERIALS													
k. IDENTIFICATION/CORRECTION OF DEFICIENT WORK IN A TIMELY MANNER													
17. TIMELY PERFORMANCE						18. COMPLIANCE WITH LABOR STANDARDS							
a. ADEQUACY OF INITIAL PROGRESS SCHEDULE						a. CORRECTION OF NOTED DEFICIENCIES							
b. ADHERENCE TO APPROVED SCHEDULE						b. PAYROLLS PROPERLY COMPLETED AND SUBMITTED							
c. RESOLUTION OF DELAYS						c. COMPLIANCE WITH LABOR LAWS AND REGULATIONS WITH SPECIFIC ATTENTION TO THE DAVIS-BACON ACT AND EEO REQUIREMENTS							
d. SUBMISSION OF REQUIRED DOCUMENTATION													
e. COMPLETION OF PUNCHLIST ITEMS						19. COMPLIANCE WITH SAFETY STANDARDS							
f. SUBMISSION OF UPDATED AND REVISED PROGRESS SCHEDULES						a. ADEQUACY OF SAFETY PLAN							
g. WARRANTY RESPONSE						b. IMPLEMENTATION OF SAFETY PLAN							
						c. CORRECTION OF NOTED							
20. REMARKS (Explanation of unsatisfactory evaluation is required. Other comments are optional. Provide facts concerning specific events or actions to justify the evaluation. These data must be in sufficient detail to assist contracting officers in determining the contractor's responsibility. Continue on separate sheet(s), if needed.)													

DD FORM 2626 (BACK), JUN 94

Reset

PERFORMANCE EVALUATION (ARCHITECT-ENGINEER)				A-E CONTRACTOR I.D. NUMBER <i>(For ACASS use only)</i>	
				1. A-E CONTRACT NUMBER	
				2. CONSTRUCTION CONTRACT NUMBER	
IMPORTANT: Be sure to complete back of form. If additional space is necessary for any item, use Remarks section on back.					
3. TYPE OF EVALUATION					
a. PHASE OF COMPLETION ☐ INTERIM (_____ %) ☐ FINAL ☐ DESIGN ☐ ENGINEERING SERVICES ☐ CONSTRUCTION		b. COMPLETION (X one) ☐ TERMINATION <i>(Explain in Remarks)</i>		4. PROJECT NUMBER	
				5. DELIVERY ORDER NO.(S) <i>(if applicable)</i>	
6. NAME AND ADDRESS OF A-E CONTRACTOR			7a. PROJECT TITLE AND LOCATION		
			7b. DESCRIPTION OF PROJECT IF NOT EXPLAINED BY TITLE		
8. NAME, ADDRESS AND PHONE NUMBER OF OFFICE RESPONSIBLE FOR:					
a. SELECTION OF A-E CONTRACTOR			b. NEGOTIATION/AWARD OF A-E CONTRACT		
c. ADMINISTRATION OF A-E CONTRACT			d. ADMINISTRATION OF CONSTRUCTION CONTRACT		
9. A-E CONTRACT DATA <i>(Items 9d thru 9g are not applicable during construction unless there are modifications to the A-E contract.)</i>					
a. TYPE OF WORK <i>(Design, study, etc.)</i>			b. TYPE OF CONTRACT		
			☐ INDEFINITE DELIVERY/INDEFINITE QUANTITY (ID/IQ) ☐ FIRM FIXED PRICE ☐ TASK ORDER UNDER ID/IQ ☐ COST REIMBURSEMENT ☐ OTHER <i>(Specify)</i>		
c. PROJECT COMPLEXITY ☐ DIFFICULT ☐ ROUTINE		d. CONTRACT OR TASK ORDER AMOUNT			
		(1) INITIAL FEE \$ _____		(2) CONTRACT OR TASK ORDER MODIFICATIONS NO. _____ AMOUNT \$ _____	
				(3) TOTAL FEE \$ _____	
e. CONTRACT OR TASK ORDER AWARD DATE		f. NEGOTIATED CONTRACT OR TASK ORDER COMPLETION DATE <i>(or number of days)</i> <i>(Including extensions)</i>		g. ACTUAL CONTRACT OR TASK ORDER COMPLETION DATE <i>(or number of days)</i>	
10. CONSTRUCTION CONTRACT DATA <i>(Not applicable at completion of design or engineering services not involving construction.)</i>					
a. CONSTRUCTION COSTS		(1) AUTHORIZED CONSTRUCTION COST \$ _____		(2) A-E ESTIMATE FOR BID ITEMS AWARDED \$ _____	
				(3) AWARD AMOUNT \$ _____	
b. DATA AT TIME OF CONSTRUCTION COMPLETION <i>(Completion date _____)</i>		NUMBER		TOTAL COST	
(1) CONSTRUCTION MODIFICATIONS				\$ _____	
(2) CONSTRUCTION MODIFICATIONS ARISING FROM DESIGN DEFICIENCIES				\$ _____	
11. A-E LIABILITY		☐ NONE ☐ UNDETERMINED ☐ PENDING \$ _____		☐ SETTLEMENT \$ _____	
12. OVERALL RATING		13. RECOMMENDED FOR FUTURE CONTRACTS?			
☐ EXCEPTIONAL ☐ SATISFACTORY ☐ UNSATISFACTORY ☐ VERY GOOD ☐ MARGINAL		☐ YES ☐ CONDITIONALLY ☐ NO <i>(Explain "No" or "Conditionally" in Remarks.)</i>			
14a. NAME, TITLE AND OFFICE OF RATING OFFICIAL			15a. NAME, TITLE AND OFFICE OF REVIEWING OFFICIAL		
TELEPHONE NUMBER: _____			TELEPHONE NUMBER: _____		
b. SIGNATURE		c. DATE		b. SIGNATURE	
				c. DATE <i>(Official Report date)</i>	
AGENCY USE: <i>(Distribution, etc.)</i>					

DD FORM 2631, APR 1999 (EG)

PREVIOUS EDITION IS OBSOLETE.

Exception to SF 1421 Approved by GSA/RMS 11-82.
WHS/D/CR, Apr 99

[illegible]

ATTACHMENT 2 – SAMPLE PROBLEM

Project – All Specialties

Project: Grand Forks AFB, ND

Contract Duration: Proposed by the Offeror.

Scope: Combination repairs to POL Tank, Bulk Storage Transfer Pumps and Off-Loading Area. See attached Sample Project Scope.

Design Discipline	Base Rates \$/hour	Burdened Rates \$/hour	Hours	Total
Project Management			260	
Architecture			16	
Mechanical			160	
Electrical			120	
Fire Protection			16	
Structural			40	
Civil			80	
Sanitary (water & wastewater)			16	
Industrial Hygienist			16	
Chemist (Hazardous Waste)			8	
Cost Engineering			40	
Geotechnical (Soils) Engineering			16	
Permits			16	
Specification Writer			40	
Clerk/Typist			24	
Total				

Construction Discipline	Base Rates \$/hour	Burdened Rates \$/hour	Hours	Total
Asbestos Worker			16	
Boilermaker			600	
Bricklayer			280	
Bricklayer (Semi-Skilled)			280	
Carpenter			400	
Cement Finisher			120	
Electrician			400	
Equipment Operator (Crane/Shovel)			400	
Equipment Operator (Light)			120	
Equipment Operator (Medium)			480	
Equipment Operator (Oiler)			480	
Laborer (Semi-Skilled)			1600	
Painter (Ordinary)			480	

Construction Discipline	Base Rates \$/hour	Burdened Rates \$/hour	Hours	Total
Sheet Metal Worker			80	
Sprinkler Installer			16	
Steam/Pipe fitters			2,816	
Structural Steel Workers			16	
Truck Driver (Heavy)			40	
Truck Driver (Light)			40	
Welder (Structural Steel)			240	
Outside Equipment Operator (Heavy)			40	
Outside Equipment Operator (Medium)			40	
Outside Equipment (Oiler)			40	
Outside Laborer (Semi-Skilled)			1200	
Outside Truck Driver (Heavy)			80	
Outside Truck Driver (Light)			80	
Total				\$

Other Costs (_____)	_____	\$
Material Cost		\$971,000
Equipment Cost		\$49,500
Design Discipline (above)		\$
Construction Discipline (above)		\$
Site Overhead		\$205,000
Profit	<u>6%</u>	\$
Total Amount		\$

Scope: Sample Project, Grand Forks AFB, ND consists of the following subcomponents:

- a. Repair POL Tank. This portion requires replacement of a floating pan (aluminum honeycomb), tank floor with a sloped floor with a secondary containment liner, provide alarms (low, high, & high-high) and controls, gauging well, revised strapping chart, manway access, hand rails, and paint interior and exterior. The design shall provide a new rectifier cathodic protection system for the tank floor. Tank is 10M BBL capacity.
- b. Replace Bulk Storage Transfer Pumps. This portion requires replacement of a 4-300 gpm pumps with 3-600 gpm pumps, replace pump house/shelter/replace control panel, and modify piping as required. Provide 2-600 gpm filter/separator to provide tank-to-tank and truck receipt capability.
- c. Repair Off-Loading Area, Spill Containment. This portion includes concrete containment for truck off-load positions. The containment shall provide the capability that if one truck leaks, the other positions can continue operations. The project shall provide 3-300 gpm pumps, replace electrical controls, and revise security fencing to include off-load positions with swing gates. The parking positions will be set-up to provide passing lane capability between truck positions.

For this project, provide:

- a. Describe your concept for design (limit 6 pages)
- b. Describe your submittal review and approval process (limit 2 pages)
- c. Describe or show your construction plan. (limit 6 pages)
- d. Provide 11X17 sketch or plan view of your concept layout for the off-load portion of the project (limit 1 page)
- e. Provide outline or summary for your Quality Assurance Plan (limit 4 pages)
- f. Provide outline or summary for your Safety and Health Plan. (limit 4 pages)
- g. Provide outline or summary of your process and steps for commissioning/acceptance by government and project closeout. (limit 6 pages)
- h. Provide realistic construction schedule at WBS level 3. Assume task order award 1 June 2010. (limit 3 11X17 pages)

This page was intentionally left blank for duplex printing.

ATTACHMENT 3

DAVIS BACON WAGE RATES (Sample Project)

Highway Construction rates apply to the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects.

All other work is considered Heavy Construction.

The following General Wage Decisions are attached:

ND080002 – Highway dated 10/16/2009

ND080014 – Heavy dated 09/05/2008

This page was intentionally left blank for duplex printing.

General Decision Number: ND080002 10/16/2009 ND2

Superseded General Decision Number: ND20070002

State: North Dakota

Construction Type: Highway

Counties: North Dakota Statewide.

HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	02/08/2008
1	05/02/2008
2	09/05/2008
3	09/26/2008
4	11/07/2008
5	11/21/2008
6	09/25/2009
7	10/16/2009

ELEC0714-002 07/01/2007

ADAMS, BILLINGS, BOTTINEAU, BOWMAN, BURKE, BURLIEGH, DIVIDE,
DUNN, EMMONS, GOLDEN VALLEY, GRANT, HETTINGER, MCHENRY,
MCKENZIE, MCLEAN, MERCER, MORTON, MOUNTRIAL, OLIVER, PIERCE,
RENVILLE, ROLLETTE, SHERIDAN, SOIUX, SLOPE, STARK, WARD, &
WILLIAMS COUNTIES:

	Rates	Fringes
ELECTRICIAN		
CABLE SPLICER.....	\$ 31.66	7.62+11%
ELECTRICIAN.....	\$ 31.26	7.62+11%

ELEC0714-003 10/01/2006		

LINE CONSTRUCTION:

	Rates	Fringes
Line Construction		
CABLE SPLICER.....	\$ 27.59	4.75+28%
GROUNDMAN.....	\$ 16.55	4.75+28%
LINE EQUIPMENT OPERATOR.....	\$ 24.83	4.75+28%
LINEMAN.....	\$ 27.59	4.75+28%

ELEC1426-002 06/01/2007		

BARNES, BENSON, CAVALIER, DICKY, EDDY, FOSTER, GRAND FORKS,
GRIGGS, KIDDER, LAMOURE, LOGAN, MCINTOSH, NELSON, PEMBINA,
RAMSEY, RANSOM, RICHLAND, SARGENT, STEELE, STUTSMAN, TOWNER,
TRAILL, WALSH, & WELLS COUNTIES:

	Rates	Fringes
ELECTRICIAN		
CABLE SPLICER.....	\$ 23.90	7.46+12%
ELECTRICIAN.....	\$ 22.76	7.46+12%

* ENGI0049-001 10/01/2009

	Rates	Fringes
Power equipment operators:		
GROUP 1.....	\$ 22.15	12.45
GROUP 2.....	\$ 21.25	12.45
GROUP 3.....	\$ 21.00	12.45
GROUP 4.....	\$ 20.85	12.45
GROUP 5.....	\$ 20.00	12.45
GROUP 6.....	\$ 18.70	12.45

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: All Cranes 60 tons and over, Cranes doing piling,
sheeting, dragline/clam work, Derrick(Guy & Stiff), Gentry

Crane Operator, Helicopter Operator, Mole Operator or Tunnel Mucking Machine, Power Shovel 3-1/2 CY. and over and Traveling Tower Crane.

GROUP 2: All Cranes 21 tons and up to 59 tons, Backhoe Operator 3 CY. and over, Creter Crane, Dredge Operator 12' and Over, Equipment Dispatcher, Finish Motor Grader, Front End Loader Operator 8 CY. and over, Master Mechanic (When supervising 5 or more Mechanics), Mon-o-rail Hoist Operator, Power Shovel up to and including 3-1/2 CY. and Tugboat.

GROUP 3: Cranes 20 tons and under, Asphalt Paving Machine Operator, Asphalt Plant Operator, Automated Grade Trimmer, Backhoe Operator 1 CY. up to and including 2-1/2 CY., Boom Truck Hydraulic (8 Tons & over), Cableway Operator, Concrete Batch Plant Operator (electronic or manual), Concrete Mixer Paving Machine Operator, Concrete Paver-Bridge Decks, Concrete Pump, Concrete Spreader Operator & Belt Placer, Crushing Plant Operator, Dozer Operator, Dredge Operator or Engineer 11' and under, Drill Rigs, Heavy Duty Rotary or Chum or Cable Drill, Front End Loader (3-1/2 CY. up to and including 7-1/2 CY.), Gravel Washing & Screening Plant Operator, Locomotive, all types, Mechanic or Welder (heavy duty), Motor Grade Operator, Pavement Breaker (Non-Hydro Hammer type, Pipeline Wrapping, Cleaning & Bending Machine Operator, Power Actuated Auger and Horizontal Boring Machine Operator 6' and over, Refrigeration Plant Engineer, Roto Milling Machine (Surface Planer) 43' & over, Scraper Operator, Slip Form Concrete Paving Operator, Tandem Pushed Quad 9 or similar, Tractor with Boom Attachment, Trenching Machine- 100 HP. and over.

GROUP 4: Articulated/Off Road Hauler, Asphalt Dump Person, Asphalt Paving Screed Operator, Backhoe - up to and including 1/2 CY., Console Board Operator, Distributor Operator (Bituminous), Forklift Operator, Front End Loader- 1-1/2 CY. up to and including 3 CY., Grade Person, Gravel Screening Plant Operator (not Crushing or Washing), Greaser, Lazer-Screed Operator, Longitudinal Float and Spray Operator, Motor Grade Operator-Hual Roads, Paving Breaker- Hydro Hammer Type, Pugmill Operator, Push Tractor, Roller, Steel & Rubber on Hot Mix Asphalt Paving, Rotomill Machine (Surface Planer), up to and including 42', Sand and Chip Spreader, Self-propelled Sheepsfoot Packer with or without Blade attachment, Self-propelled Traveling Soil Stabilizer, Sheepsfoot Packer with Dozer attachment- 100 HP and over, Shouldering Machine, Slip Form, Curb & Gutter Operator, Tamping Machine Operator, Tie Tamper and Ballast Machine, Trenching Machine Operator- 46 HP up to and including 99 HP, Truck Mechanic, Well Points, Tub Grinder.

GROUP 5: Boom Truck- A- Frame or Hydraulic 2 tons up to and including 7 tons, Broom-Self propelled, Concrete Saw (Power Operated), Front End Loader Operator, less than 1-1/2 CY., Mobile Cement Mixer, Power Actuated Auger & Horizontal Boring Machine Operator up to and including 5", Roller, on

other than Hot Mix Asphalt Paving, Oilers, Vibrating Packer Operator (Pad Type) Self-propelled, Water Spraying Equipment-Self Propelled.

GROUP 6: Brakeman or Switchman, Curb Machine Operator (Manuel), Dredge or Tugboat Deckhand, Drill Truck Gravel/Testing Operator, Form Trench Digger (Power), Gunit Operator Gunall, Paint Machine Striping Operator, Pick-up Sweeper, 1CY. & over Hopper Capacity, Scissor Jack-Self Propelled Platform Lift, Straw Mulcher and Blower, Stump Chipper Operator, Tractor Pulling Compaction or Aerating Equipment, Trenching Machine Operator- up to and including 45 HP.

SUND2002-001 09/02/2009

	Rates	Fringes
Electrician		
Cass County.....	\$ 14.72	3.40
CARPENTER.....	\$ 22.50	3.65
Cement Mason/Finisher.....	\$ 22.50	3.65
Laborers:		
GROUP 1:.....	\$ 15.40	
GROUP 2:.....	\$ 15.65	
GROUP 3:.....	\$ 15.80	
GROUP 4:.....	\$ 16.55	

LABORERS CLASSIFICATIONS

GROUP 1: General Construction Laborers: Sack Shaker (cement and mineral filler): Pipe Handler: Drill Runner Tender: Salamander Heater and Blower Tender, Light truck, Pickup Driver, Flaggers and Pilot Car Drivers.

GROUP 2: Semi Skilled Laborer: Bulk Cement Handler: Conduit Layer, Telephone or Electrical: Form Setter (pavement): Gas Electric or pneumatic tool operator: Chipping Hammer, Grinders and Paving Brakers (tamper-drit) Concrete Vibrator Operator: Chain Saw Operator: Concrete Saw Operator: Concrete Curing Man (not water): Bituminous worker (Shoveler, Dumper, Raker and Floated): Kettleman (bituminous or lead): Concrete Bucket Signlman: Power Buggy Operator: Brick and Mason Tender: Multiplate Pipelayer: Culvert Pipe Layers: Concrete Finishers Tender. Carpenters Tenders.

GROUP 3: Caisson Worker: Bottom Man (sanitary sewer, storm sewer water and gas liners): Concrete Mixer Operator (one bag capacity): Mortar Mixer.

GROUP 4: Pipe Layers (sanitary sewer, storm sewer, water and gas lines): Drill runner (includes Wagon Churn or Air Track) Powderman, Gunit and Sandblast, Nozzleman,

Reinforcing Steel Setters/Tiers.

* TEAM0638-001 10/01/2009

	Rates	Fringes
TRUCK DRIVER		
Euclid Driver-Over 20 yards.	\$ 22.22	9.45
Single Axle Trucks.....	\$ 21.02	9.45
Tandem Tri/Axle Semi, Low Boy and Off Road Heavy Duty End Dumps-20 yards and under.....	\$ 21.45	9.45
Tandem TRi/Axle Truck.....	\$ 21.14	9.45

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

General Decision Number: ND080014 09/05/2008 ND14

Superseded General Decision Number: ND20070014

State: North Dakota

Construction Type: Heavy

Counties: Burleigh, Cass, Grand Forks and Morton Counties in North Dakota.

HEAVY CONSTRUCTION PROJECTS (Excluding Sewer & Water Line Construction & Drainage Projects)

Modification Number	Publication Date
0	02/08/2008
1	05/02/2008
2	09/05/2008

* ELEC0714-008 07/01/2007

BURLEIGH AND MORTON COUNTIES:

	Rates	Fringes
ELECTRICIAN		
CABLE SPLICER.....	\$ 31.66	7.62+11%
ELECTRICIAN.....	\$ 31.26	7.62+11%

* ELEC1426-011 06/01/2007

CASS AND GRAND FORKS COUNTIES

	Rates	Fringes
CABLE SPLICER.....	\$ 23.90	7.46+12%
ELECTRICIAN		
WIREMAN.....	\$ 22.76	7.46+12%

SUND2000-006 05/04/2000

	Rates	Fringes
Laborers:		
Common.....	\$ 9.92	
Pipelayers.....	\$ 12.00	

PAINTER

Brush, Roller, & Spray.....	\$ 17.00	
-----------------------------	----------	--

Power equipment operators:

Backhoe.....	\$ 15.74	4.84
Bobcat.....	\$ 12.60	4.50
Bulldozer.....	\$ 14.41	4.50
Crane.....	\$ 13.29	3.42
Front End Loader.....	\$ 14.93	
Motor Grader.....	\$ 18.10	
Scraper.....	\$ 16.13	
Tractor.....	\$ 12.13	

TRUCK DRIVER

Dump.....	\$ 8.50	
Tandem/Semi.....	\$ 15.77	

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board

U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

August 2009

SECTION 00 45 00 (00600)
REPRESENTATIONS, CERTIFICATIONS & OTHER STATEMENTS OF OFFERORS

INDEX

- 1.0 REPRESENTATIONS, CERTIFICATIONS & OTHER STATEMENTS OF OFFERORS
 - 1.1 (FAR 52.204-8) ANNUAL REPRESENTATIONS AND CERTIFICATIONS (FEB 2009)
 - 1.2 DFARS 252.204-7007 ALTERNATE A, ANNUAL REPRESENTATIONS AND CERTIFICATIONS (JAN 2008)
 - 1.3 TAXPAYER IDENTIFICATION (Local Provision).
 - 1.4 CONTRACTOR'S CERTIFICATION (Reference FAR 4.102) (Local Provision)

IMPORTANT NOTE:

FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION is included in Section 00 72 00 CONTRACT CLAUSES of this solicitation. Online Representations and Certifications Application (ORCA) per FAR 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS is required to be completed.

Failure of completing applicable requirements contained herein and online representations and certifications and/or provisions may result in delay of contract award.

SECTION 00 45 00 (00600)

1.0 REPRESENTATIONS, CERTIFICATIONS & OTHER STATEMENTS OF OFFERORS

FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION is included in Section 00 72 00 CONTRACT CLAUSES of this solicitation. The offeror will be required to complete Online Representations and Certifications Application (ORCA) per FAR 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS.

Provide the following certifications and representations as a part of the proposal, check the appropriate boxes, fill in the appropriate information, and provide signatures on the attached pages, and submit with Standard Form 1442 (Section 00 11 00).

Online Representations and Certifications Application is available at: <http://orca.bpn.gov>.

Failure of completing applicable requirements contained herein and online representations and certifications and/or provisions may result in delay of contract award.

1.1 (FAR 52.204-8) ANNUAL REPRESENTATIONS AND CERTIFICATIONS (FEB 2009)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 237120.

(2) The small business size standard is \$33,500,000.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b)(1) If the clause at 52.204-7, Central Contractor Registration, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the clause at 52.204-7 is not included in this solicitation, and the offeror is currently registered in CCR, and has completed the ORCA electronically, the offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

☐ (i) Paragraph (d) applies.

☐ (ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)(1) The following representations or certifications in ORCA are applicable to this solicitation as indicated:

(i) 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in Part 13;

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$100,000.

(iii) 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the clause at 52.204-7, Central Contractor Registration.

(iv) 52.204-5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(v) 52.209-5, Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(vi) 52.214-14, Place of Performance—Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(vii) 52.215-6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(viii) 52.219-1, Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(ix) 52.219-2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(x) 52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222-26, Equal Opportunity.

(xi) 52.222-25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222-26, Equal Opportunity.

(xii) 52.222-38, Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

(xiii) 52.223-1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or include the clause at 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xiv) 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA-designated items.

(xv) 52.225-2, Buy American Act Certificate. This provision applies to solicitations containing the clause at 52.225-1.

(xvi) 52.225-4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. (Basic, Alternate I, and Alternate II) This provision applies to solicitations containing the clause at 52.225-3.

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$67,826, the provision with its Alternate II applies.

(xvii) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-5.

(xviii) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

(xix) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to—

(A) Solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions; and

(B) For DoD, NASA, and Coast Guard acquisitions, solicitations that contain the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

(2) The following certifications are applicable as indicated by the Contracting Officer:

 x (i) 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

 x (ii) 52.219-21, Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program.

 (iii) 52.219-22, Small Disadvantaged Business Status.

- ___ (A) Basic.
- ___ (B) Alternate I.
- ___ (iv) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.
- ___ (v) 52.222-48, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.
- ___ (vi) 52.222-52, Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.
- ___ (vii) 52.223-9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA—Designated Products (Alternate I only).
- x (viii) 52.223-13, Certification of Toxic Chemical Release Reporting.
- ___ (ix) 52.227-6, Royalty Information.
- ___ (A) Basic.
- ___ (B) Alternate I.
- ___ (x) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

(d) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause #	Title	Date	Change
_____	_____	_____	_____

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.
(End of provision)

1.2 DFARS 252.204-7007 ALTERNATE A, ANNUAL REPRESENTATIONS AND CERTIFICATIONS (JAN 2008)

As prescribed in 204.1202, substitute the following paragraph (c) for paragraph (c) of the provision at FAR 52.204-8:

(c) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) Web site at <https://orca.bpn.gov/>. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR/DFARS clause No	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

1.3 TAXPAYER IDENTIFICATION (Local Provision).

(a) Definitions.

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

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

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) Taxpayer Identification Number (TIN).

☐ TIN: _____.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or local);

☐ Foreign government;

[] International organization per 26 CFR 1.6049-4;

[] Other _____.

(f) Common parent.

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

[] Name and TIN of common parent:

Name _____

TIN _____
(End of provision)

1.4 CONTRACTOR'S CERTIFICATION (Reference FAR 4.102) (Local Provision)

Offerors are cautioned to note the "Contractor's Certification" included in this solicitation and to furnish the information required by paragraph (b), Partnerships, and paragraph (c), Corporations, as appropriate.

(a) CONTRACT WITH INDIVIDUAL. If the resultant contract is with an individual, it shall be signed by the individual in his own name. A contract with an individual doing business as a firm shall be signed by that individual and will ordinarily take the following form.

_____ (Signed)

An individual doing business as

(b) CONTRACTS WITH PARTNERSHIPS. If the resultant contract is with a partnership, it need be signed by only one partner PROVIDED the partner signing has the authority to legally bind the partnership. In addition, the following statement shall be completed:

_____ is a partnership composed of
(Firm Name)

(List All Partners)

(Indicate if any partner is limited in partnership authority)

(c) CONTRACTS WITH CORPORATIONS. If the resultant contract is with a corporation, it shall be executed in the corporation name, followed by the word "by" after which the person who has been authorized to execute the contract on behalf of the corporation shall sign his/her name, with the designation of his/her official capacity. In addition, the following certification shall be completed:

I, _____, certify that I am the _____ of the corporation named as Contractor herein, that _____ who signed this contract on behalf of the Contractor was then _____ of said corporation, that said contract was duly for and on behalf of said corporation by authority of the governing body and is within the scope of its corporate powers.

In witness whereof, I have hereunto affixed my signature this ____ day of _____, 19____.

 (Signature, Printed Name, Title)

(d) CONTRACT WITH JOINT VENTURES. If the resultant contract is with a joint venture, each participant shall sign and in the manner indicated above for each type of participant. In addition, to assure a single point of contact for resolution of contractual matters and payments, the following certification shall be signed by each participant in the joint venture.

The parties hereto expressly understand and agree as follows:

(1) _____
 (Name) (Title) (Company)

is the principal representative of the joint venture. As such, all communications regarding the administration of the contract and the performance of the work thereunder may be directed to him. In the absence of:

 (Name) (Title) (Company as above)

 (Name) (Title) (Company of Alternate)

is the alternate principle of the joint venture.

(2) Directions, approvals, required notices, and all other communications from the Government to the joint venture, including transmittal of payments by the Government, shall be directed to:

 (Name) (Title) (Company)

principal representative of the joint venture.

(e) SIGNATURE OF AGENTS. If the resultant contract is signed by an agent, other than as stated above, the fact of the agency will be evidenced by a copy of the Power of Attorney.

This page was intentionally left blank for duplex printing.

September 2009

RFP

SECTION 00 72 00 (00700)

CONTRACT CLAUSES

TABLE OF CONTENTS

* - CLAUSE, WHICH MAY BE INCORPORATED BY REFERENCE

All clauses or provisions in references to this Solicitation are also applicable to each “Task Order”.

1. *FAR 52.202-1 DEFINITIONS (JULY 2004)
2. *FAR 52.203-3 GRATUITIES (APR 1984)
3. *FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)
4. *FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)
5. *FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
6. *FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
7. *FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)
8. *FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008) (Applicable if contract exceeds \$5,000,000 and performance period is 120 days or more)
9. *FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007) (For Military Contracts Exceeding \$5,000,000)
10. RESERVED
11. *FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)
12. *FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION (APR 2008)
13. FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEPT 2007) [Applicable Where Contractors Have Access to Federally-Controlled Facility or Access to A Federal Information System]
14. RESERVED
15. *FAR 52.209-6 PROTECTING THE GOVERNMENTS INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEPT 2006)
16. *FAR 52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (APR 2008) [For Military Contract's Only]
17. FAR 52.211-18 VARIATION IN ESTIMATED QUANTITY (APR 1984)
18. *FAR 52.215-2 AUDIT AND RECORDS-NEGOTIATION (MAR 2009)
19. *FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)
20. FAR 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS (OCT 1997)
21. *FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)
22. FAR 52.215-13 SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS (OCT 1997)
23. *FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (JAN 2004)
24. *FAR 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)
25. *FAR 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (OCT 1997)
26. *FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)
27. *FAR 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS (OCT 1997)
28. FAR 52.216-18 ORDERING (OCT 1995)
29. FAR 52.216-19 ORDER LIMITATIONS (OCT 1995)
30. FAR 52.216-22 INDEFINITE QUANTITY (OCT 1995)
31. FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)
32. *FAR 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL

BUSINESS CONCERNS (JULY 2005)

33. *FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)
34. *FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008)
35. RESERVED
36. *FAR 52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)
37. *FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—DISADVANTAGED STATUS AND REPORTING (APR 2008)
38. RESERVED
39. *FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)
40. *FAR 52.222-3 CONVICT LABOR (JUNE 2003)
41. *FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT— OVERTIME COMPENSATION (JULY 2005)
42. *FAR 52.222-5 DAVIS-BACON ACT—SECONDARY SITE OF THE WORK (JULY 2005)
43. *FAR 52.222-6 DAVIS-BACON ACT (JULY 2005)
44. *FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)
45. *FAR 52.222-8 PAYROLLS AND BASIC RECORDS (DEVIATION 2009-O0001)
46. *FAR 52.222-9 APPRENTICES AND TRAINEES (JULY 2005)
47. *FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)
48. *FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (JULY 2005)
49. *FAR 52.222-12 CONTRACT TERMINATION--DEBARMENT (FEB 1988)
50. *FAR 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)
51. *FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)
52. *FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)
53. *FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
54. *FAR 52.222-26 EQUAL OPPORTUNITY (MAR 2007)
55. *FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)
56. *FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)
57. *FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)
58. *FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)
59. *FAR 52.222-38 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)
60. FAR 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)
61. *FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (AUG 2007)
62. *FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009) [For Contract Durations Exceeding 120 calendar days]
63. *FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)
64. *FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003) [For Work on Federal Facilities]
65. *FAR 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)
66. FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (MAY 2008) [For Contracts exceeding \$100,000. EPA Designated product (available at <http://www.epa.gov/cpg/>)]
67. *FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003) [For Contracts Over \$100,000]
68. *FAR 52.225-9 BUY AMERICAN ACT—CONSTRUCTION MATERIALS (FEB 2009) (For Contracts less than \$7.443 million)
69. *FAR 52.225-10 NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS (FEB 2009) (Applicable with FAR 52.225-9)
70. *FAR 52.225-11 BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (AUG 2009) [For Contracts more than \$7,443,000] ALTERNATE I (JUNE 2009) [For Contracts

between \$7.443 and 8.817449 Million]

71. *FAR 52.225-12 NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (FEB 2009) [Applicable with FAR 52.225-11] ALTERNATE II (JUNE 2009) [For Contracts between \$7.443 and 8.4817449 Million]
72. *FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUNE 2008)
73. RESERVED.
74. RESERVED
75. RESERVED
76. RESERVED.
77. *FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)
78. *FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)
79. *FAR 52.227-4 PATENT INDEMNITY--CONSTRUCTION CONTRACTS (DEC 2007)
80. *FAR 52.228-2 ADDITIONAL BOND SECURITY (OCT 1997)
81. *FAR 52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997) [For Contracts Exceeding \$100,000]
82. *FAR 52.228-11 PLEDGES OF ASSETS (SEP 2009)
83. *FAR 52.228-12 PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS (OCT 1995)
84. FAR 52.228-14 IRREVOCABLE LETTER OF CREDIT (DEC 1999)
85. *FAR 52.228-15 PERFORMANCE AND PAYMENT BONDS – CONSTRUCTION (NOV 2006)
86. FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 2003) [For Contracts Exceeding \$100,000]
87. *FAR 52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (SEPT 2002)
88. *FAR 52.232-17 INTEREST (OCT 2008)
89. FAR 52.232-18 AVAILABILITY OF FUNDS (APR 1984)
90. *FAR 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986) ALTERNATE I (APR 1984)
91. *FAR 52.232-27 PROMPT PAY FOR CONSTRUCTION CONTRACTS (OCT 2008)
92. *FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER –CENTRAL CONTRACTOR REGISTRATION (OCT 2003)
93. *FAR 52.233-1 DISPUTES (JULY 2002)
94. *FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996)
95. FAR 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)
96. FAR 52.236-2 DIFFERING SITE CONDITIONS (APR 1984)
97. *FAR 52.236-3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)
98. *FAR 52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)
99. *FAR 52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)
100. FAR 52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)
101. *FAR 52.236-8 OTHER CONTRACTS (APR 1984)
102. *FAR 52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)
103. FAR 52.236-10 OPERATIONS AND STORAGE AREAS (APR 1984)
104. *FAR 52.236-11 USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)
105. *FAR 52.236-12 CLEANING UP (APR 1984)
106. *FAR 52.236-13 ACCIDENT PREVENTION-ALTERNATE I (NOV 1991)
107. *FAR 52.236-14 AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)
108. FAR 52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)
109. *FAR 52.236-17 LAYOUT OF WORK (APR 1984)
110. FAR 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997) ALTERNATE I (APR 1984)
111. *FAR 52.236-25 REQUIREMENTS FOR REGISTRATION OF DESIGNERS (JUNE 2003)
112. *FAR 52.236-26 PRECONSTRUCTION CONFERENCE (FEB 1995)
113. *FAR 52.242-13 BANKRUPTCY (JUL 1995)
114. *FAR 52.242-14 SUSPENSION OF WORK (APR 1984)
115. FAR 52.243-4 CHANGES (JUNE 2007)
116. *FAR 52.244-2 SUBCONTRACTS (JUNE 2007)
117. *FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2009)

- 118. *FAR 52.245-1 GOVERNMENT PROPERTY (JUNE 2007) ALT. I (JUNE 2007)
- 119. *FAR 52.245-9 USE AND CHARGES (JUNE 2007)
- 120. *FAR 52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)
- 121. *FAR 52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)
- 122. FAR 52.248-3 VALUE ENGINEERING--CONSTRUCTION (SEPT 2006) (ALTERNATE I (APR 1984)
- 123. *FAR 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (MAY 2004) ALTERNATE I (SEP 1996) [For Contracts Over \$100,000]
- 124. *FAR 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)
- 125. EFARS 52.249-5000 BASIS FOR SETTLEMENT OF PROPOSALS
- 126. FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)
- 127. DFARS 252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)
- 128. DFARS 252.203-7000 REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (JAN 2009)
- 129. DFARS 252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE—CONTRACT-RELATED FELONIES (MARCH 1999)
- 130. DFARS 252.204-7000 DISCLOSURE OF INFORMATION (DEC 1991)
- 131. DFARS 252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)
- 132. DFARS 252.204-7004 ALTERNATE A, CENTRAL CONTRACTOR REGISTRATION (SEP 2007)
- 133. DFARS 252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)
- 134. DFARS 252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (DEC 2006)
- 135. DFARS 252.215-7000 PRICING ADJUSTMENTS (DEC 1991)
- 136. DFARS 252.215-7004 EXCESSIVE PASS-THROUGH CHARGES (MAY 2008)
- 137. DFARS 252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (APR 2007)
- 138. RESERVED
- 139. RESERVED
- 140. RESERVED
- 141. DFARS 252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)
- 142. DFARS 252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (OCT 2004)
- 143. DFARS 252.227-7022 GOVERNMENT RIGHTS (UNLIMITED) (MAR 1979)
- 144. DFARS 252.227-7023 DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (MAR 1979)
- 145. DFARS 252.227-7033 RIGHTS IN SHOP DRAWINGS (APR 1966)
- 146. DFARS 252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)
- 147. DFARS 252.232-7005 REIMBURSEMENT OF SUBCONTRACTOR ADVANCE PAYMENTS--DOD PILOT MENTOR-PROTEGE PROGRAM (SEP 2001)
- 148. DFARS 252.232-7010 LEVIES ON CONTRACT PAYMENTS (DEC 2006)
- 149. DFARS 252.236-7000 MODIFICATION OF PROPOSALS - PRICE BREAKDOWN (DEC 1991)
- 150. DFARS 252.236-7001 CONTRACT DRAWINGS AND SPECIFICATIONS (AUG 2000)
- 151. DFARS 252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)
- 152. DFARS 252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)
- 153. DFARS 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (AUG 2009)
- 154. DFARS 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)
- 155. DFARS 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)
- 156. LCL PIL 2003-06 CONTRACTOR EMPLOYEES REQUIRING ACCESS TO AUTOMATED INFORMATION SYSTEMS (AIS)

SECTION 00 72 00 (00700)

CONTRACT CLAUSES

1. *FAR 52.202-1 DEFINITIONS (JULY 2004)

(a) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—

- (1) The solicitation, or amended solicitation, provides a different definition;
- (2) The contracting parties agree to a different definition;
- (3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or

(4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

(b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acqnet.gov> at the end of the FAR, after the FAR Appendix.

(End of clause)

2. *FAR 52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled--

- (1) To pursue the same remedies as in a breach of the contract; and
- (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) 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.

3. *FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor

proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

4. *FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract. "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from--

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may

(i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or

(ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

5. *FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

- (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
- (2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either--

- (A) Exchanging the information covered by such subsections for anything of value; or
- (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

6. *FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

7. *FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)

(a) *Definitions.* As used in this clause—

“Agency” means “executive agency” as defined in Federal Acquisition Regulation (FAR) [2.101](#).

“Covered Federal action” means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

“Indian tribe” and “tribal organization” have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act ([25 U.S.C. 450b](#)) and include Alaskan Natives.

“Influencing or attempting to influence” means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

“Local government” means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

“Officer or employee of an agency” includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

“Person” means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

“Reasonable compensation” means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

“Reasonable payment” means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

“Recipient” includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and *are* permitted by other Federal law.

“Regularly employed” means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State” means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibition.* [31 U.S.C. 1352](#) prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with [31 U.S.C. 1352](#) the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contract the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions.* The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) *Agency and legislative liaison by Contractor employees.* (i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—

(A) The qualities and characteristics (including individual demonstrations) of the person’s products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person’s products or services for an agency’s use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) *Professional and technical services.* (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that

Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR [3.803\(a\)\(2\)\(iii\)](#)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) *Disclosure.* (1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) *Penalties.* (1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by [31 U.S.C. 1352](#). An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) *Subcontracts.* (1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$100,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$100,000.

(End of clause)

8. *FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008) (Applicable if contract exceeds \$5,000,000 and performance period is 120 days or more)

(a) *Definitions.* As used in this clause—

“Agent” means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

“Full cooperation”— (1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors’ and investigators’ request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require—

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

“United States,” means the 50 States, the District of Columbia, and outlying areas.

(b) *Code of business ethics and conduct.* (1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—

(i) Have a written code of business ethics and conduct; and

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Contractor shall—

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3)(i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act ([31 U.S.C. 3729-3733](#)).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor’s disclosure as confidential where the information has been marked “confidential” or “proprietary” by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, [5 U.S.C. Section 552](#), without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization’s jurisdiction.

(iii) If the violation relates to an order against a Government wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering

agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the

following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) *Subcontracts.* (1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.
(End of clause)

9. *FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007) (For Military Contracts Exceeding \$5,000,000)

(a) Definition.

“United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) Display of fraud hotline poster(s). Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

[DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202-2884]

(Contracting Officer shall insert—

(i) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster); and

(ii) The website(s) or other contact information for obtaining the poster(s).)

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

(End of clause)

10. RESERVED

11. *FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

(a) Definitions. As used in this clause—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.” For paper and paper products, postconsumer material means

“postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

“Printed or copied double-sided” means printing or reproducing a document so that information is on both sides of a sheet of paper.

“Recovered material,” for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

(End of clause)

12. *FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION (APR 2008)

(a) Definitions. As used in this clause—

“Central Contractor Registration (CCR) database” means the primary Government repository for Contractor information required for the conduct of business with the Government.

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same concern.

“Registered in the CCR database” means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields, to include validation of the Taxpayer

Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record “Active”. The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS +4” followed by the DUNS or DUNS +4 number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

- (i) Company legal business.
- (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
- (iii) Company Physical Street Address, City, State, and Zip Code.
- (iv) Company Mailing Address, City, State and Zip Code (if separate from physical).
- (v) Company Telephone Number.
- (vi) Date the company was started.
- (vii) Number of employees at your location.
- (viii) Chief executive officer/key manager.
- (ix) Line of business (industry).
- (x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government’s reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g) (1) (i) If a Contractor has legally changed its business name, “doing business as” name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day’s written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The

Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.
(End of clause)

13. FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEPT 2007) [Applicable Where Contractors Have Access to Federally-Controlled Facility or Access to A Federal Information System]

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(End of clause)

14. RESERVED

15. *FAR 52.209-6 PROTECTING THE GOVERNMENTS INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEPT 2006)

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate office or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:

- (1) The name of the subcontractor.
- (2) The Contractor's knowledge of the reasons for the subcontractor being on the Excluded Parties List System.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the Excluded Parties List System.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

16. *FAR 52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (APR 2008) [For Military Contract's Only]

This is a rated order certified for national defense, emergency preparedness, and energy program use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

(End of clause)

17. FAR 52.211-18 VARIATION IN ESTIMATED QUANTITY (APR 1984)

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

18. *FAR 52.215-2 AUDIT AND RECORDS-NEGOTIATION (MAR 2009)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) *Comptroller General.*—

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

19. *FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because--

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the (2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if--

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

20. FAR 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR [15.403-4](#), except that this clause does not apply to any modification if an exception under FAR [15.403-1](#) applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under [26 U.S.C. 6621\(a\)\(2\)](#); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

21. *FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either--

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data-- Modifications.

(End of clause)

22. FAR 52.215-13 SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR [15.403-4](#); and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR [15.403-4](#), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR [15.403-4](#), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR [15.403-1](#) applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR [15.406-2](#) that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR [15.403-4](#) on the date of agreement on price or the date of award, whichever is later.

(End of clause)

23. *FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (JAN 2004)

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

(End of clause)

24. *FAR 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.
(End of clause)

25. *FAR 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (OCT 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(o)(6). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.408(j).
(End of clause)

26. *FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall—

(1) Maintain current, accurate, and complete inventory records of assets and their costs;
(2) Provide the ACO or designated representative ready access to the records upon request;
(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).
(End of clause)

27. *FAR 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS (OCT 1997)

(a) Exceptions from cost or pricing data.

(1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Information on modifications of contracts or subcontracts for commercial items.

(A) If—

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include—

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2. (End of clause)

28. FAR 52.216-18 ORDERING (OCT 1995)

[Task Order Contracts Only]

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from Notice to Proceed through the end of basic 2 year period or end of the 3 year option period (for a total of 5 years).

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered “issued” when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

29. FAR 52.216-19 ORDER LIMITATIONS (OCT 1995)

[Task Order Contracts Only]

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than \$5000, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor—

- (1) Any order for a single item in excess of \$10,000,000;
- (2) Any order for a combination of items in excess of \$325,000,000; or
- (3) A series of orders from the same ordering office within 60 days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 30 days after issuance, with written notice stating the Contractor’s intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

30. FAR 52.216-22 INDEFINITE QUANTITY (OCT 1995)

[Task Order Contracts Only]

(a) This is an indefinite-quantity contract for the supplies or services specified and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the “maximum.” The Government shall order at least the quantity of supplies or services designated in the Schedule as the “minimum.”

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor’s and Government’s rights and obligations with respect to that order to the same extent as if the order were completed during the contract’s effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after the end of basic 2 year period or end of the 3 year option period (for a total of 5 years).

(End of clause)

31. FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days

of the expiration; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 5 years.

(End of clause)

32. *FAR 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JULY 2005)

(a) *Definition.* "HUBZone small business concern," as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) *Evaluation preference.* (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and

(ii) Otherwise successful offers from small business concerns.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

[] Offeror elects to waive the evaluation preference.

(d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

33. *FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract—

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled veteran-owned small business concern” —

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern” means a small business concern that represents, as part of its offer that—

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(End of clause)

34. *FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008)

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

“Commercial item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror’s subcontracting plan shall include the following:

(1) In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANC and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (*e.g.*, CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

- (iv) Records of any outreach efforts to contact—
 - (A) Trade associations;
 - (B) Business development organizations;
 - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
 - (D) Veterans service organizations.
- (v) Records of internal guidance and encouragement provided to buyers through—
 - (A) Workshops, seminars, training, etc.; and
 - (B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided —

- (1) The master plan has been approved;
- (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
- (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in [19.702](#) for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing

subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled “Utilization Of Small Business Concerns;” or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>.

Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe.

(1) *ISR*. This report is not required for commercial plans.

The report is required for each contract containing an individual subcontract plan and shall be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that

awarded the subcontract.

(2) *SSR*.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the

Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

35. RESERVED

36. *FAR 52.219-16

LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)

(a) Failure to make a good faith effort to comply with the subcontracting plan, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion, or in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by a commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

37. *FAR 52.219-25

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—DISADVANTAGED STATUS AND REPORTING (APR 2008)

[Only Applicable To Full and Open]

(a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern is a small disadvantaged business concern certified by the Small Business Administration by using the Central Contractor Registration database or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

(b) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on [Optional Form 312](#), Small Disadvantaged Business Participation Report, in the Contractor's own format providing the same information, or accomplished through using the Electronic Subcontracting Reporting System's Small Disadvantaged Business Participation Report. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small Business Subcontracting Plan, reports shall be submitted with the final Individual Subcontract Report at the completion of the contract.
(End of clause)

38. RESERVED

39. *FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer. (End of clause)

40. *FAR 52.222-3 CONVICT LABOR (JUNE 2003)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations

have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

41. *FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT— OVERTIME COMPENSATION (JULY 2005)

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal

Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) *Payrolls and basic records.* (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act .

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

42. *FAR 52.222-5 DAVIS-BACON ACT—SECONDARY SITE OF THE WORK (JULY 2005)

(a)(1) The offeror shall notify the Government if the offeror intends to perform work at any secondary site of the work, as defined in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Davis-Bacon Act, of this solicitation.

(2) If the offeror is unsure if a planned work site satisfies the criteria for a secondary site of the work, the offeror shall request a determination from the Contracting Officer.

(b)(1) If the wage determination provided by the Government for work at the primary site of the work is not applicable to the secondary site of the work, the offeror shall request a wage determination from the Contracting Officer.

(2) The due date for receipt of offers will not be extended as a result of an offeror's request for a wage determination for a secondary site of the work.

(End of provision)

43. *FAR 52.222-6 DAVIS-BACON ACT (JULY 2005)

(a) *Definition.*—"Site of the work"—(1) Means—

(i) *The primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer’s payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

(c)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional

classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

44. *FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

45. *FAR 52.222-8 PAYROLLS AND BASIC RECORDS (DEVIATION 2009-O0001)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

.(b)(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the

information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on Weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the contractor, or the Wage and Hour Division of the Department of labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a Subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Contracting Officer.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify--

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

46. *FAR 52.222-9 APPRENTICES AND TRAINEES (JULY 2005)

(a) *Apprentices.* (1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the

wage determination for the work actually performed.

(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.* (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
(End of clause)

47. *FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

48. *FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (JULY 2005)

(a) *Definition.* "Construction, alteration or repair," as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of

paragraphs (a)(1)(i) and (ii) of the “site of the work” as defined in the FAR clause at 52.222-6, Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the “site of work” definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Davis-Bacon Act, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the “site of the work” definition).

(b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

- (1) Davis-Bacon Act;
- (2) Contract Work Hours and Safety Standards Act—Overtime Compensation (if the clause is included in this contract);
- (3) Apprentices and Trainees;
- (4) Payrolls and Basic Records;
- (5) Compliance with Copeland Act Requirements;
- (6) Withholding of Funds;
- (7) Subcontracts (Labor Standards);
- (8) Contract Termination—Debarment;
- (9) Disputes Concerning Labor Standards;
- (10) Compliance with Davis-Bacon and Related Act Regulations; and
- (11) Certification of Eligibility.

(c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor’s signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.
(End of clause)

49. *FAR 52.222-12 CONTRACT TERMINATION--DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

50. *FAR 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

51. *FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency the U.S. Department of Labor, or the employees of their representatives.

52. *FAR 52.222-15**CERTIFICATION OF ELIGIBILITY (FEB 1988)**

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

53. *FAR 52.222-21**PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.
(End of clause)

54. *FAR 52.222-26**EQUAL OPPORTUNITY (MAR 2007)**

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b)(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c)(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf

of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.
(End of clause)

55. *FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)

(a) Definitions.

"Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly Federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means--

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee

programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by--
 (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;
 (ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;
 (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Contractor--

(1) Actively participates in the group;
 (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to--

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

56. *FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)

(a) *Definitions.* As used in this clause—

“All employment openings” means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

“Executive and top management” means any employee—

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge

of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

“Other eligible veteran” means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

“Positions that will be filled from within the Contractor's organization” means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established “recall” lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

“Qualified special disabled veteran” means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

“Special disabled veteran” means—

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (*i.e.*, a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

“Veteran of the Vietnam era” means a person who—

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) *General.* (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor including social or recreational programs;

and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) *Listing openings.* (1) The Contractor shall immediately list all employment openings that exist at the

time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) *Postings.* (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

(End of clause)

57. *FAR 52.222-36
1998)

AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN

(a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

(i) Recruitment, advertising, and job application procedures;

- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or other forms of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.
- (b) Postings.
- (1) The Contractor agrees to post employment notices stating--
 - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
 - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
 - (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (b) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

58. *FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)

- (a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—
- (1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and
 - (2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and
 - (3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.
- (b) The Contractor shall report the above items by completing the Form VETS-100, entitled “Federal Contractor Veterans’ Employment Report (VETS-100 Report)”.
- (c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by

paragraph (a)(1) of this clause. Contractors may select an ending date—

- (1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
- (2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

- (1) The information is voluntarily provided;
- (2) The information will be kept confidential;
- (3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
- (4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.
(End of clause)

59. *FAR 52.222-38 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (*i.e.*, if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS-100 Report required by that clause.

(End of provision)

60. FAR 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)

(a) *Definition.* As used in this clause-

"United States" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board

(NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board
 Division of Information
 1099 14th Street, N.W.
 Washington, DC 20570
 1-866-667-6572
 1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>.

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR part 470, Subpart B-Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to-

- (1) Contractors and subcontractors that employ fewer than 15 persons;
- (2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;
- (3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;

(4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that-

(i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and

(ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or

(5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall-

(1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or

(3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR part 470, Subpart B-Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

(End of clause)

61. *FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (AUG 2007)

(a) *Definitions.* As used in this clause—

“Coercion” means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Involuntary servitude” includes a condition of servitude induced by means of—

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract; or
- (3) Use forced labor in the performance of the contract.

(c) *Contractor requirements.* The Contractor shall—

- (1) Notify its employees of—
 - (i) The United States Government’s zero tolerance policy described in paragraph (b) of this clause; and
 - (ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* The Contractor shall inform the Contracting Officer immediately of—

(1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and

(2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may render the Contractor subject to—

(1) Required removal of a Contractor employee or employees from the performance of the contract;

(2) Required subcontractor termination;

(3) Suspension of contract payments;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(6) Suspension or debarment.

(f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

(End of Clause)

62. *FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009) [For Contract Durations Exceeding 120 calendar days]

(a) *Definitions.* As used in this clause—

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 ([46 U.S.C. App. 1702](#)), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at [22.1803](#). An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

“Subcontract” means any contract, as defined in [2.101](#), entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

“United States”, as defined in [8 U.S.C. 1101\(a\)\(38\)](#), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.* (1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) *All new employees.* (A) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract.* For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at [20 U.S.C. 1001\(a\)](#)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2) respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor’s decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor’s MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating

Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts*. The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) *Is for*— (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

(End of clause)

63. *FAR 52.223-3

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL

SAFETY DATA (JAN 1997)

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (If none, insert "None")	Identification No.
_____	_____
_____	_____
_____	_____

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources. (End of clause)

64. *FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003) [For Work on Federal Facilities]

(a) *Definitions.* As used in this clause—

“Priority chemical” means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

“Toxic chemical” means a chemical or chemical category listed in 40 CFR 372.65.

(b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

- (1) The emergency planning reporting requirements of Section 302 of EPCRA.
 - (2) The emergency notice requirements of Section 304 of EPCRA.
 - (3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.
 - (4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.
 - (5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.
 - (6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Sections 502 and 503 of Executive Order 13148.
- (End of clause)

65. *FAR 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

(a) *Definitions.* As used in this clause--

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall--within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration--

- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establish an ongoing drug-free awareness program to inform such employees about--
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- (3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;
- (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.
- (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.560, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

66. FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (MAY 2008) [For Contracts exceeding \$100,000. EPA Designated product (available at <http://www.epa.gov/cpg/>)]

(a) Definitions. As used in this clause—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

(2) Submit this estimate to the Contracting Officer.

(End of clause)

67. *FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)
[For Contracts Over \$100,000]

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(i) Major group code 10 (except 1011, 1081, and 1094.

(ii) Major group code 12 (except 1241).

(iii) Major group codes 20 through 39.

(iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*)), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(5) The facility is not located in the United States or its outlying areas.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt—

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall—

(i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(ii) Continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall—

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

(End of clause)

68. *FAR 52.225-9 BUY AMERICAN ACT—CONSTRUCTION MATERIALS (FEB 2009) (For Contracts less than \$7.443 million)

(a) *Definitions.* As used in this clause—

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

- (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, under a contract or subcontract at any tier, without

modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

“Foreign construction material” means a construction material other than a domestic construction material.

“United States” means the 50 States and the District of Columbia, and outlying areas.

(b) *Domestic preference.* (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American Act.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—

- (A) A description of the foreign and domestic construction materials;
- (B) Unit of measure;
- (C) Quantity;
- (D) Price;
- (E) Time of delivery or availability;
- (F) Location of the construction project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign construction

materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
[Include other applicable supporting information.]

[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

69. *FAR 52.225-10 NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS (FEB 2009) (Applicable with FAR 52.225-9)

(a) *Definitions.* “Commercially available off-the-shelf (COTS) item,” “construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials” (Federal Acquisition Regulation (FAR) clause 52.225-9).

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the

inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

(End of provision)

70. *FAR 52.225-11 BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (AUG 2009) [For Contracts more than \$7,443,000] ALTERNATE I (JUNE 2009) [For Contracts between \$7.443 and 8.817449 Million]

(a) *Definitions.* As used in this clause—

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

- (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, under a contract or subcontract at any tier, without

modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

“Caribbean Basin country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

"Least developed country construction material" means a construction material that-

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 States and the District of Columbia, and outlying areas.

"WTO GPA country construction material" means a construction material that-

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.*

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference

for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American Act.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction

materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

Item 2:			
Foreign construction material			
Domestic construction material			

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
[Include other applicable supporting information.]

[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

(End of clause)

[For Contracts between \$7.443 and 8.817449 Million]

Alternate I (JUNE 2009). As prescribed in 25.1102(c)(3), add the following definitions of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

“Bahrainian, Mexican, or Omani construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except the Bahrain FTA, NAFTA and the Oman FTA apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials other than Bahrainian, Mexican, or Omani construction materials.

(2) The Contractor shall use only domestic or designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

71. *FAR 52.225-12 NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (FEB 2009) [Applicable with FAR 52.225-11] ALTERNATE II (JUNE 2009) [For Contracts between \$7.443 and 8.4817449 Million]

(a) *Definitions.* “Commercially available off-the-shelf (COTS) item,” “construction material,” “designated country construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.*

(1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

(End of provision)

ALTERNATE II (JUNE 2009) [For Contracts between \$7.407 and 8.422165 Million]

“As prescribed in 25.1102(d)(3), add the definitions “Bahrainian, Mexican, or Omani construction material” to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) *Alternate offers.* (1) When an offer includes foreign construction material, except foreign construction material from a designated country other than Bahrain, Mexico or Oman, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material other than Bahrainian, Mexican, or Omani construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material other than Bahrainian, Mexican, or Omani construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations

72. *FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUNE 2008)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC’s implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC’s List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC’s regulations at 31 CFR chapter V and/or on OFAC’s website at <http://www.treas.gov/offices/enforcement/ofac>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

73. **RESERVED.**

74. **RESERVED**

75. **RESERVED**

76. **RESERVED.**

77. *FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent—

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. the entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

(End of clause)

78. *FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copy-right infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in the Contractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

79. *FAR 52.227-4 PATENT INDEMNITY--CONSTRUCTION CONTRACTS (DEC 2007)

Except as otherwise provided, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under (35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

80. *FAR 52.228-2 ADDITIONAL BOND SECURITY (OCT 1997)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if--

- (a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government;
- (b) Any surety fails to furnish reports on its financial condition as required by the Government;
- (c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or
- (d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting Officer has the right to immediately draw on the ILC.

81. *FAR 52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997) [For Contracts Exceeding \$100,000]

- (a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.
- (b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective

(1) for such period as the laws of the State in which this contract is to be performed prescribe, or

(2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

82. *FAR 52.228-11 PLEDGES OF ASSETS (SEP 2009)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond--

- (1) Pledge of assets; and
- (2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of--

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form); and/or

(2) A recorded lien on real estate. The offeror will be required to provide--

(i) A mortgagee title insurance policy, in an insurance amount equal to the amount of the lien, or other evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standards at http://www.usdoj.gov/enrd/2001_Title_Standards.html. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who

certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

83. *FAR 52.228-12 PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS (OCT 1995)

In accordance with Section 806(a)(3) of Public Law 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requestor.

84. FAR 52.228-14 IRREVOCABLE LETTER OF CREDIT (DEC 1999)

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and--

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC to cover the entire period of performance or may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal of least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Miller Act, the later of--

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of--

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d) Only federally insured financial institution rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

[Issuing Financial Institution's Letterhead or Name and Address]

Issue Date -----

Irrevocable Letter of Credit No.-----

Account party's name-----

Account party's address-----

For Solicitation No.-----

(For reference only)

TO: [U.S. Government agency]

[U.S. Government agency's address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$ _____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or transferee's sight draft(s) drawn on issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

[Confirming Financial Institution's Letterhead or Name and Address]---

(Date) _____

Our Letter of Credit

Advice Number-----

Beneficiary:-----

[U.S. Government agency]

Issuing Financial Institution:-----

Issuing Financial Institution's LC No.:-----

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [name of issuing financial institution] for drawings of up to United States dollars _____/U.S. \$ _____ and expiring with our close of business on _____ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

[City, State]

(Date) _____

[Name and address of financial institution]

Pay to the order of-----

[Beneficiary Agency] _____

the sum of United States \$ _____

This draft is drawn under-----

Irrevocable Letter of Credit No.-----

[Beneficiary Agency]

By: _____

85. *FAR 52.228-15 PERFORMANCE AND PAYMENT BONDS – CONSTRUCTION (NOV 2006)

(a) *Definitions.* As used in this clause—

“Original contract price” means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds.* Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance bonds (Standard Form 25).* The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds (Standard Form 25-A).* The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) *Additional bond protection.* (i) The Government may require additional performance and

payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) *Furnishing executed bonds.* The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) *Surety or other security for bonds.* The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register or may be obtained from the:

U.S. Department of Treasury
Financial Management Service
Surety Bond Branch
3700 East West Highway, Room 6F01
Hyattsville, MD 20782.
Or via the internet at <http://www.fms.treas.gov/c570/>.

(e) *Notice of subcontractor waiver of protection (40 U.S.C.3133(c)).* Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.
(End of clause)

86. FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 2003) [For Contracts Exceeding \$100,000]

(a) As used in this clause--

"All applicable Federal, State, and local taxes and duties," means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Contract date," means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

87. *FAR 52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (SEPT 2002)

(a) Payment of Price. The Government shall pay the Contractor the contract price as provided in this contract.

(b) Progress Payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if--

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Contractor Certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.) I hereby certify, to the best of my knowledge and belief, that--

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)

(Title)

(Date)

(d) Refund of Unearned Amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall--

(1) Notify the Contracting Officer of such performance deficiency; and
 (2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until--

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or
 (ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) Retainage. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) Title, Liability, and Reservation of Rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as--

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
 (2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) Reimbursement for Bond Premiums. In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) Final Payment. The Government shall pay the amount due the Contractor under this contract after--

(1) Completion and acceptance of all work;
 (2) Presentation of a properly executed voucher; and
 (3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Limitation Because of Unfinalized Work. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on unfinalized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) Interest Computation on Unearned Amounts. In accordance with 31 U.S.C. 3903(c)(1), the amount payable under subparagraph (d)(2) of this clause shall be--

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and
 (2) Deducted from the next available payment to the Contractor.

88. *FAR 52.232-17 INTEREST (OCT 2008)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(1) The date on which the designated office receives payment from the Contractor;

(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

89. FAR 52.232-18 AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

90. *FAR 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986) ALTERNATE I (APR 1984)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. **Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.**

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

91. *FAR 52.232-27 PROMPT PAY FOR CONSTRUCTION CONTRACTS (OCT 2008)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice payments*—(1) *Types of invoice payments*. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project.

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) *Contractor's invoice*. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including

order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts.

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232–38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(xi) Any other information or documentation required by the contract.

(3) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) *Computing penalty amount.* The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233–1, Disputes.

(5) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations

at 5 CFR part 1315.

(6) *Additional interest penalty.* (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if—

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible—

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(b) *Contract financing payments.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Subcontract clause requirements.* The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) *Prompt payment for subcontractors.* A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) *Interest for subcontractors.* An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) *Subcontractor clause flowdown.* A clause requiring each subcontractor to

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) *Subcontract clause interpretation.* The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that—

(1) *Retainage permitted.* Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) *Withholding permitted.* Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) *Withholding requirements.* Permit such withholding without incurring any obligation to pay a late payment penalty if—

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) *Subcontractor withholding procedures.* If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) *Subcontractor notice.* Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) *Contracting Officer notice.* Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;

(3) *Subcontractor progress payment reduction.* Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;

(4) *Subsequent subcontractor payment.* Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(i) Make such payment within—

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government;

or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) *Notice to Contracting Officer.* Notify the Contracting Officer upon—

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment,

specifying—

(A) The amounts withheld under paragraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) *Interest to Government.* Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until—

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this

clause.

(f) *Third-party deficiency reports—*(1) *Withholding from subcontractor.* If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with the Miller Act (U.S.C. 3133), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause—

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) *Subsequent payment or interest charge.* As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected,

the Contractor shall—

- (i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or
 - (ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.
 - (g) *Written notice of subcontractor withholding.* The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying—
 - (1) The amount to be withheld;
 - (2) The specific causes for the withholding under the terms of the subcontract; and
 - (3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.
 - (h) *Subcontractor payment entitlement.* The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.
 - (i) *Prime-subcontractor disputes.* A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.
 - (j) *Preservation of prime-subcontractor rights.* Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.
 - (k) *Non-recourse for prime contractor interest penalty.* The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.
 - (l) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—
 - (1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—
 - (i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
 - (ii) Affected contract number and delivery order number if applicable;
 - (iii) Affected contract line item or subline item, if applicable; and
 - (iv) Contractor point of contact.
 - (2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.
- (End of clause)

92. *FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER –CENTRAL CONTRACTOR REGISTRATION (OCT 2003)

- (a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term “EFT” refers to the funds transfer and may also include the payment information transfer.
- (2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—
 - (i) Accept payment by check or some other mutually agreeable method of payment; or
 - (ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).
- (b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.
- (c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the

Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) *Contractor EFT arrangements.* If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to Subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.
(End of Clause)

93. *FAR 52.233-1 DISPUTES (JULY 2002)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) Contractors shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows:

'I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.'

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified if required), or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

94. *FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

95. FAR 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

(End of clause)

96. FAR 52.236-2 DIFFERING SITE CONDITIONS (APR 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of

(1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or

(2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required, provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

97. *FAR 52.236-3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to

- (1) conditions bearing upon transportation, disposal, handling, and storage of materials;
- (2) the availability of labor, water, electric power, and roads;
- (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- (4) the conformation and conditions of the ground; and
- (5) the character of equipment and facilities needed preliminary to and during work

performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

98. *FAR 52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

99. *FAR 52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

100. FAR 52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be

responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

101. *FAR 52.236-8 OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

102. *FAR 52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities

- (1) at or near the work site, and
- (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refused to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

103. FAR 52.236-10 OPERATIONS AND STORAGE AREAS (APR 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

104. *FAR 52.236-11 USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of

work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

105. *FAR 52.236-12 CLEANING UP (APR 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

106. *FAR 52.236-13 ACCIDENT PREVENTION-ALTERNATE I (NOV 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will (1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities; (2) avoid interruptions of Government operations and delays in project completion dates; and (3) control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall--

- (1) Provide appropriate safety barricades, signs, and signal lights;
- (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
- (3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontractors.

(f) Before commencing the work, the Contractor shall--

- (1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and
- (2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

107. *FAR 52.236-14 AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

108. FAR 52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

109. *FAR 52.236-17 LAYOUT OF WORK (APR 1984)

The Contractor shall lay out its work from Government-established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

110. FAR 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997) ALTERNATE I (APR 1984)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to

the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the Contracting Officer is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail

(1) the proposed fabrication and assembly of structural elements, and

(2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor. Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

111. *FAR 52.236-25 REQUIREMENTS FOR REGISTRATION OF DESIGNERS (JUNE 2003)

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work. (End of clause)

112. *FAR 52.236-26 PRECONSTRUCTION CONFERENCE (FEB 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

113. *FAR 52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

114. *FAR 52.242-14 SUSPENSION OF WORK (APR 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

115. FAR 52.243-4 CHANGES (JUNE 2007)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes--

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished property or services; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating

- (1) the date, circumstances, and source of the order and
- (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after

(1) receipt of a written change order under paragraph (a) of this clause or
 (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

116. *FAR 52.244-2 SUBCONTRACTS (JUNE 2007)

(a) Definitions. As used in this clause--

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent of subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract," means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the the prime contract or a subcontract. It includes, but is not limited to purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modification or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that--

- (1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
- (2) Is fixed-price and exceeds--

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the the simplified threshold or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

(e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

- (i) A description of the supplies or services to be subcontracted.
- (ii) Identification of the type of subcontract to be used.
- (iii) Identification of the proposed subcontractor.
- (iv) The proposed subcontract price.
- (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
- (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

- (vii) A negotiation memorandum reflecting--
- (A) The principal elements of the subcontract price negotiations;
 - (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.
- (f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination--
- (1) Of the acceptability of any subcontract terms or conditions;
 - (2) Of the acceptability of any cost under this contract; or
 - (3) To relieve the Contractor of any responsibility for performing this contract.
- (g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- (h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement by the Government.
- (i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.
- (j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which ere evaluated during negotiations:

(End of clause)

117. *FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2009)

(a) *Definitions.* As used in this clause—

“Commercial item” has the meaning contained in Federal Acquisition Regulation [2.101](#), Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#)), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In alter-ing this clause to identify the appropriate parties, all disclo-sures of violation of the civil False Claims Act or of Federalcriminal law shall be directed to the agency Office of theInspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5). Applies to subcontracts funded under the Act, if the subcontract is funded under the Recovery Act.

(iii) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities, if the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(v) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212(a));

(vi) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(vii) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201) if flow down is required in accordance with paragraph (g) of FAR clause 52.222-39).

(viii) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

(ix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.
(End of clause)

118. *FAR 52.245-1 GOVERNMENT PROPERTY (JUNE 2007) ALT. I (JUNE 2007)

(a) *Definitions.* As used in this clause—

“Acquisition cost” means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

“Cannibalize” means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

“Contractor-acquired property” means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

“Contractor inventory” means—

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(2) Any property that the Government is obligated or has the option to take over under any type of contract, *e.g.*, as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

(4) “Contractor’s managerial personnel” means the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor’s business;

(2) All or substantially all of the Contractor’s operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

“Demilitarization” means rendering a product unusable for, and not restorable to, the purpose for which it was

designed or is customarily used.

“Discrepancies incident to shipment” means any differences (*e.g.*, count or condition) between the items documented to have been shipped and items actually received.

“Equipment” means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.

“Government-furnished property” means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract.

“Government property” means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property.

“Material” means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end-item. Material does not include equipment, special tooling and special test equipment.

“Nonseverable” means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

“Plant equipment” as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

“Precious metals” means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

“Property” means all tangible property, both real and personal.

“Property Administrator” means an authorized representative of the Contracting Officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

“Provide” means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

“Real property” means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

“Sensitive property” means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

“Surplus property” means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA).

(b) *Property management.* (1) The Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective control of Government property, consistent with voluntary consensus standards and/or industry-leading practices and standards for Government property management except where inconsistent with law or regulation.

During the period of performance, the Contractor shall disclose any significant changes to their property management system to the Property Administrator prior to implementation.

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, disposition, or via a completed investigation, evaluation, and final determination for lost, damaged, destroyed, or stolen property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(c) *Use of Government property.* The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer. The Contractor shall not modify, cannibalize, or make alterations to Government property unless this contract specifically identifies the modifications, alterations or improvements as work to be performed.

(d) *Government-furnished property.* (1) The Government shall deliver to the Contractor the Government-furnished property described in this contract. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished property will be suitable for contract performance and will be delivered to the Contractor by the dates stated in the contract.

(i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Contracting Officer shall consider an equitable adjustment to the contract (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an "as-is" condition. The Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(3) (i) The Contracting Officer may by written notice, at any time—

(A) Increase or decrease the amount of Government-furnished property under this contract;

(B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) *Title to Government property.* (1) The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) *Fixed-price contracts.* (i) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause.

(ii) Title to each item of equipment, special test equipment and special tooling acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in

performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(iii) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract—

(A) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(B) Title to all other material shall pass to and vest in the Government upon—

(1) Issuance of the material for use in contract performance;

(2) Commencement of processing of the material or its use in contract performance; or

(3) Reimbursement of the cost of the material by the Government,

whichever occurs first.

(3) *Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.* (i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—

(A) Issuance of the property for use in contract performance;

(B) Commencement of processing of the property for use in contract performance; or

(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(iii) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (e)(3)(iii) (collectively referred to as "Government property"), are subject to the provisions of this clause.

(f) *Contractor plans and systems.* (1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:

(i) *Acquisition of Property.* The Contractor shall document that all property was acquired consistent with its engineering, production planning, and material control operations.

(ii) *Receipt of Government Property.* The Contractor shall receive Government property (document the receipt), record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (*e.g.*, stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) *Government-furnished property.* The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) *Contractor-acquired property.* The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) *Records of Government property.* The Contractor shall create and maintain records of all Government property accountable to the contract, including Government furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

(1) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition).

(2) Quantity received (or fabricated), issued, and balance-on-hand.

(3) Unit acquisition cost.

(4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(5) Unit of measure.

(6) Accountable contract number or equivalent code designation.

- (7) Location.
- (8) Disposition.
- (9) Posting reference and date of transaction.
- (10) Date placed in service.

(B) *Use of a Receipt and Issue System for Government Material.* When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) *Physical inventory.* The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (*e.g.*, overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract).

(v) *Subcontractor control.* (A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions (*e.g.*, extent of liability for loss, damage, destruction or theft of Government property).

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) *Reports.* The Contractor shall have a process to create and provide reports of discrepancies; loss, damage, destruction, or theft; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Contracting Officer.

(A) Loss, damage, destruction, or theft. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, damage, destruction, or theft to the property administrator as soon as the facts become known or when requested by the Government.

(B) Such reports shall, at a minimum, contain the following information:

- (1) Date of incident (if known).
- (2) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable).
- (3) Quantity.
- (4) Unique Item Identifier (if available).
- (5) Accountable Contract number.
- (6) A statement indicating current or future need.
- (7) Acquisition cost, or if applicable, estimated scrap proceeds, estimated repair or replacement costs.
- (8) All known interests in commingled property of which the Government property is a part.
- (9) Cause and corrective action taken or to be taken to prevent recurrence.
- (10) A statement that the Government will receive any reimbursement covering the loss, damage, destruction, or theft, in the event the Contractor was or will be reimbursed or compensated.
- (11) Copies of all supporting documentation.
- (12) Last known location.
- (13) A statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.

(vii) *Relief of stewardship responsibility.* Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility for Government property when such property is—

(A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, damage, destruction or theft of Government property;

(B) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(C) Disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) *Utilizing Government property.* (A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and

report Government property in its possession that is excess to contract performance.

(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government property with property not owned by the Government.

(ix) *Maintenance.* The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) *Property closeout.* The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss, damage, destruction, or theft cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.

(3) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(g) *Systems analysis.* (1) The Government shall have access to the contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be safeguarded from tampering or destruction.

(3) Should it be determined by the Government that the Contractor's property management practices are inadequate or not acceptable for the effective management and/or control of Government property under this contract, and/or present an undue risk to the Government, the Contractor shall immediately take all necessary corrective actions as directed by the Property Administrator.

(4) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(h) *Contractor Liability for Government Property.*

(1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies—

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel. Contractor's managerial personnel, in this clause, means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business; all or substantially all of the Contractor's operation at any one plant or separate location; or a separate and complete major industrial operation.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss, damage, destruction, or theft, due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss, damage, destruction, or theft of Government property occurred while the Contractor had adequate property management practices or the loss, damage, destruction, or theft of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the Government property

from further loss, damage, destruction, or theft. The Contractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.

(4) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(i) *Equitable adjustment.* Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. The right to an equitable adjustment shall be the Contractor's exclusive remedy and the Government shall not be liable to suit for breach of contract for the following:

- (1) Any delay in delivery of Government-furnished property.
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use.
- (3) An increase, decrease, or substitution of Government-furnished property.
- (4) Failure to repair or replace Government property for which the Government is responsible.

(j) *Contractor inventory disposal.* Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer.

(1) *Scrap to which the Government has obtained title under paragraph (e) of this clause.*

(i) *Contractor with an approved scrap procedure.* (A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.

(B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that—

- (1) Requires demilitarization;
- (2) Is a classified item;
- (3) Is generated from classified items;
- (4) Contains hazardous materials or hazardous wastes;
- (5) Contains precious metals; or
- (6) Is dangerous to the public health, safety, or welfare.

(ii) *Contractor without an approved scrap procedure.*

The Contractor shall submit an inventory disposal schedule for all scrap. The Contractor may not dispose of scrap resulting from production or testing under this contract without Government approval.

(2) *Predisposal requirements.* (i) Once the Contractor determines that Contractor-acquired property is no longer needed for contract performance, the Contractor in the following order of priority—

- (A) May contact the Contracting Officer if use of the property in the performance of other Government contracts is practical;
- (B) May purchase the property at the acquisition cost; or
- (C) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).

(ii) The Contractor shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not used in the performance of other Government contracts under paragraph (j)(2)(i)(A) of this clause, property that was not purchased under paragraph (j)(2)(i)(B) of this clause, and property that could not be returned to a supplier under paragraph (j)(2)(i)(C) of this clause.

(3) *Inventory disposal schedules.* (i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify—

(A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of this contract;

(B) Contractor-acquired property, to which the Government has obtained title

under paragraph (e) of this clause, which is no longer required for performance of that contract; and

(C) Termination inventory.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for—

(A) Special test equipment with commercial components;

(B) Special test equipment without commercial components;

(C) Printing equipment;

(D) Information technology (*e.g.*, computers, computer components, peripheral equipment, and related equipment);

(E) Precious metals;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) The Contractor shall describe the property in sufficient detail to permit an understanding of its intended use. Property with the same description, condition code, and reporting location may be grouped in a single line item.

(4) *Submission requirements.* The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

(i) 30-days following the Contractor's determination that a Government property item is no longer required for performance of this contract;

(ii) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(iii) 120 days, or such longer period as may be approved by the Termination Contracting Officer following contract termination in whole or in part.

(5) *Corrections.* The Plant Clearance Officer may—

(i) Reject a schedule for cause (*e.g.*, contains errors, determined to be inaccurate); and

(ii) Require the Contractor to correct an inventory disposal schedule.

(6) *Postsubmission adjustments.* The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

(7) *Storage.* (i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

(8) *Disposition instructions.* (i) If the Government does not furnish disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. If not returned to the Government, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(9) *Disposal proceeds.* As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(10) *Subcontractor inventory disposal schedules.* The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(4) of this clause.

(k) *Abandonment of Government property.* (1) The Government shall not abandon sensitive Government property or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place, at which time all obligations of the Government regarding such property shall cease.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) *Communication.* All communications under this clause shall be in writing.

(m) *Contracts outside the United States.* If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government furnished," respectively. (End of clause)

Alternate I (June 2007). As prescribed in 45.107(a)(2), substitute the following for paragraph (h)(1) of the basic clause:

(h)(1) The Contractor assumes the risk of, and shall be responsible for, any loss, damage, destruction, or theft of Government property upon its delivery to the Contractor as Government-furnished property. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

119. *FAR 52.245-9 USE AND CHARGES (JUNE 2007)

(a) *Definitions.* As used in this clause:

"Acquisition cost" means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

"Government property" means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property.

"Plant equipment", as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

"Real property" means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

"Rental period" means the calendar period during which Government property is made available for nongovernmental purposes.

"Rental time" means the number of hours, to the nearest whole hour, rented property is actually used for nongovernmental purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental (less normal wear and tear).

(b) *Use of Government property.* The Contractor may use the Government property without charge in the performance of—

(1) Contracts with the Government that specifically authorize such use without charge;

(2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having

cognizance of the prime contract—

- (i) Approves a subcontract specifically authorizing such use; or
- (ii) Otherwise authorizes such use in writing; and

(3) Other work, if the Contracting Officer specifically authorizes in writing use without charge for such work.

(c) *Rental.* If granted written permission by the Contracting Officer, or if it is specifically provided for in the Schedule, the Contractor may use the Government property (except material) for a rental fee for work other than that provided in paragraph (b) of this clause. Authorizing such use of the Government property does not waive any rights of the Government to terminate the Contractor's right to use the Government property. The rental fee shall be determined in accordance with the following paragraphs.

(d) *General.* (1) Rental requests shall be submitted to the Administrative Contracting Officer (ACO), identify the property for which rental is requested, propose a rental period, and compute an estimated rental charge by using the Contractor's best estimate of rental time in the formulae described in paragraph (e) of this clause.

(2) The Contractor shall not use Government property for nongovernmental purposes, including Independent Research and Development, until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property shall be used only on a non-interference basis.

(e) *Rental charge.*— (1) *Real property and associated fixtures.*

(i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Contractor shall submit the appraisal to the ACO at least 30 days prior to the date the property is needed for nongovernmental use. Except as provided in paragraph (e)(1)(iii) of this clause, the ACO shall use the appraisal rental rate to determine a reasonable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) When the ACO believes the appraisal rental rate is unreasonable, the ACO shall promptly notify the Contractor. The parties may agree on an alternative means for computing a reasonable rental charge.

(iv) The Contractor shall obtain, at its expense, additional property appraisals in the same manner as provided in paragraph (e)(1)(i) if the effective period has expired and the Contractor desires the continued use of property for nongovernmental use. The Contractor may obtain additional appraisals within the effective period of the current appraisal if the market prices decrease substantially.

(2) *Other Government property.* The Contractor may elect to compute the rental charge using the appraisal method described in paragraph (e)(1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour: The rental charge is calculated by multiplying 2 percent of the acquisition cost by the hours of rental time, and dividing by 720.

(3) *Alternative methodology.* The Contractor may request consideration of an alternative basis for computing the rental charge if it considers the monthly rental rate or a timebased rental unreasonable or impractical.

(f) *Rental payments.* (1) Rent is due 60 days following completion of the rental period or as otherwise specified in the contract. The Contractor shall compute the rental due, and furnish records or other supporting data in sufficient detail to permit the ACO to verify the rental time and computation.

Payment shall be made by check payable to the Treasurer of the United States and sent to the contract administration office identified in this contract, unless otherwise specified by the Contracting Officer.

(2) Interest will be charged if payment is not made by the date specified in paragraph (f)(1) of this clause. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the *Federal Register* semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of Government property or any other failure to perform this contract according to its terms.

(g) *Use revocation.* At any time during the rental period, the Government may revoke nongovernmental use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition (less normal wear and tear), or both.

(h) *Unauthorized use.* The unauthorized use of Government property can subject a person to fines, imprisonment, or both, under 18 U.S.C. 641.
(End of clause)

120. *FAR 52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not--
 (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
 (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 (3) Constitute or imply acceptance; or
 (4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may
 (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor
 or
 (2) Terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

121. *FAR 52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is

free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

122. FAR 52.248-3 VALUE ENGINEERING--CONSTRUCTION (SEPT 2006) (ALERNATE I (APR 1984))

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) of this clause.

(b) Definitions. "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) of this clause).

"Value engineering change proposal (VECP)" means a proposal that--

- (1) Requires a change to this, the instant contract, to implement; and
- (2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change--

- (i) In deliverable end item quantities only; or
- (ii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in paragraphs (c) (1) through (7) of this clause. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

- (1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.
- (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
- (3) A separate, detailed cost estimate for
 - (i) the affected portions of the existing contract requirement and
 - (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) of this clause.
- (4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.
- (5) A prediction of any effects the proposed change would have on collateral costs to the agency.
- (6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.
- (7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) Government action.

(1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an

agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applied a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing.

(1) Rates. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by

- (i) 45 percent for fixed-price contracts or
- (ii) 75 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to--

- (i) Accept the VECP;
- (ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and
- (iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) Deleted.

(h) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$55,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) of this clause, the Contractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(i) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering--Construction clause of contract - _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of Clause)

123. *FAR 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (MAY 2004) ALTERNATE I (SEP 1996) [For Contracts Over \$100,000]

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

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

(6) As directed by the Contracting Officer, transfer title and deliver to the Government

- (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and
- (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b) (6) of this clause; provided, however, that the Contractor

- (i) is not required to extend credit to any purchaser and
- (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1 year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of the termination, the total (without duplication of any items) of--

- (i) The cost of this work;
- (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

124. *FAR 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with

the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if-

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

- (i) acts of God or of the public enemy,
- (ii) acts of the Government in either its sovereign or contractual capacity,
- (iii) acts of another Contractor in the performance of a contract with the Government,
- (iv) fires,
- (v) floods,
- (vi) epidemics,
- (vii) quarantine restrictions,
- (viii) strikes,
- (ix) freight embargoes,
- (x) unusually severe weather, or
- (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

125. EFARS 52.249-5000 BASIS FOR SETTLEMENT OF PROPOSALS

Actual costs will be used to determine equipment cost for a settlement proposal submitted on the total cost basis under FAR 49.206-2(b). In evaluating a termination settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

(1) Actual costs for each piece of equipment, or groups of similar serial or series equipment, need not be available in the contractor's accounting records to determine total actual equipment costs.

(2) If equipment costs have been allocated to a contract using predetermined rates, those charges will be adjusted to actual costs.

(3) Recorded job costs adjusted for unallowable and unallocable expenses will be used to determine equipment operating expenses.

(4) Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of FAR 31.205-11).

(5) License, taxes, storage and insurance costs are normally recovered as an indirect expense and unless the contractor charges these costs directly to contracts, they will be recovered through the indirect expense rate.

126. FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://acquisition.gov/comp/far/index.html>
<http://www.acq.osd.mil/dpap/>
<http://www.acq.osd.mil/dpap/dars/dfars/index.htm>

(End of clause)

127. DFARS 252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) Definition.

"Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

128. DFARS 252.203-7000 REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (JAN 2009)

(a) Definition. "Covered DoD official," as used in this clause, means an individual that—

(1) Leaves or left DoD service on or after January 28, 2008; and

(2)(i) Participated personally and substantially in an acquisition as defined in 41 U.S.C. 403(16) with a value in excess of \$10 million, and serves or served—

(A) In an Executive Schedule position under subchapter II of chapter 53 of Title 5, United States Code;

(B) In a position in the Senior Executive Service under subchapter VIII of chapter 53 of Title 5, United States Code; or

(C) In a general or flag officer position compensated at a rate of pay for grade O-7 or above under section 201 of Title 37, United States Code; or

(ii) Serves or served in DoD in one of the following positions: program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount in excess of \$10 million.

(b) The Contractor shall not knowingly provide compensation to a covered DoD official within 2 years after the official leaves DoD service, without first determining that the official has sought and received, or has not received after 30 days of seeking, a written opinion from the appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to the activities that the official is expected to undertake on behalf of the Contractor.

(c) Failure by the Contractor to comply with paragraph (b) of this clause may subject the Contractor to rescission of this contract, suspension, or debarment in accordance with 41 U.S.C. 423(e)(3).

(End of clause)

129. DFARS 252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE—CONTRACT-RELATED FELONIES (MARCH 1999)

(a) Definitions.

As used in this clause--

(1) "Arising out of a contract with the "DoD" means any act in connection with--

(i) Attempting to obtain;

(ii) Obtaining; or
 (iii) Performing a contract or first-tier subcontract of any department, or component of the Department of Defense (DoD).

(2) "Conviction of fraud or any other felony," means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) "Date of conviction," means the date judgement was entered against the individual.

(b) Any individual who is convicted after September 29, 1988 of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--

- (1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;
- (2) On board of directors of any DoD Contractor or first-tier subcontractor;
- (3) As a consultant to any DoD Contractor or first-tier subcontractor; or
- (4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than five years from the date of conviction.

(d) 10 U.S.C. 2408 provides that a defense Contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly--

- (1) Employing a person under a prohibition in paragraph (b) of this clause;
- (2) Allowing such a person to serve on the board of directors of Contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as--

- (1) Suspension or debarment;
- (2) Cancellation of the contract at no cost to the Government; or
- (3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify--

- (1) The person involved;
- (2) The nature of the conviction and resultant sentence or punishment imposed;
- (3) The reasons for the requested waiver; and
- (4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C.2408(c), defense contractors and subcontractors may obtain information as to whether a particular has been convicted of fraud or any other felony arising out of a contract with the DoD by contracting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

130. DFAR 252.204-7000 DISCLOSURE OF INFORMATION (DEC 1991)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

- (1) The Contracting Officer has given prior written approval; or
- (2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting

Officer.
(End of clause)

131. DFARS 252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the Contractor.

132. DFARS 252.204-7004 ALTERNATE A, CENTRAL CONTRACTOR REGISTRATION (SEP 2007)

As prescribed in 204.1104, substitute the following paragraph (a) for paragraph (a) of the clause at FAR 52.204-7:

(a) Definitions. As used in this clause--

“Central Contractor Registration (CCR) database” means the primary Government repository for contractor information required for the conduct of business with the Government.

“Commercial and Government Entity (CAGE) code” means—

(1) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization that DLIS records and maintains in the CAGE master file. This type of code is known as an “NCAGE code.”

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11 of the Federal Acquisition Regulation) for the same parent concern.

“Registered in the CCR database” means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database;

(2) The Contractor’s CAGE code is in the CCR database; and

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service, and has marked the records “Active.” The Contractor will be required to provide consent for TIN validation to the Government as part of the CCR registration process.

133. DFARS 252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)

(a) *Definition.* “Cooperative agreement holder” means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450(c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those

appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

134. DFARS 252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (DEC 2006)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$30,000 with a firm, or a subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(End of clause)

135. DFARS 252.215-7000 PRICING ADJUSTMENTS (DEC 1991)

The term “pricing adjustment,” as used in paragraph (a) of the clauses entitled “Price Reduction for Defective Cost or Pricing Data--Modifications,” “Subcontractor Cost or Pricing Data,” and “Subcontractor Cost or Pricing Data--Modifications,” means the aggregate increases and/or decreases in cost plus applicable profits.

(End of clause)

136. DFARS 252.215-7004 EXCESSIVE PASS-THROUGH CHARGES (MAY 2008)

(a) *Definitions.* As used in this clause—

“Added value” means that the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (e.g., processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).

“Excessive pass-through charge,” with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit on work performed by a subcontractor (other than charges for the costs of managing subcontracts and applicable indirect costs and profit based on such costs).

“No or negligible value” means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders).

“Subcontract” means any contract, as defined in section 2.101 of the Federal Acquisition Regulation, entered into by a subcontractor to furnish supplies or services for performance of the contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for the

Contractor or another subcontractor.

(b) *General.* The Government will not pay excessive pass-through charges. The Contracting Officer shall determine if excessive pass-through charges exist.

(c) *Required reporting of performance of work by the Contractor or a subcontractor.* The Contractor shall notify the Contracting Officer in writing if—

(1) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Recovery of excessive pass-through charges.* If the Contracting Officer determines that excessive pass-through charges exist—

(1) For fixed-price contracts, the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price; and

(2) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart [231.2](#) of the Defense FAR Supplement.

(e) *Access to records.*

(1) The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.

(2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer, or authorized representative, shall have the right to examine and audit all the subcontractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(f) *Flowdown.* The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract, except for—

- (1) Firm-fixed-price subcontracts awarded on the basis of adequate price competition;
- (2) Fixed-price subcontracts with economic price adjustment, awarded on the basis of adequate price competition;
- (3) Firm-fixed-price subcontracts for the acquisition of a commercial item; or
- (4) Fixed-price subcontracts with economic price adjustment, for the acquisition of a commercial item.

(End of clause)

**137. DFARS 252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)
(APR 2007)**

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause

of this contract.

(a) *Definitions.*

“Historically black colleges and universities,” as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“Minority institutions,” as used in this clause, means institutions meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) Except for company or division-wide commercial items subcontracting plans, the term “small disadvantaged business,” when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46-48), may be counted toward the Contractor’s small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Pub. L. 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded—

(1) Protege firms which are qualified organizations employing the severely handicapped; and

(2) Former protege firms that meet the criteria in Section 831(g)(4) of Pub. L. 101-510.

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable. (End of clause)

138. RESERVED

139. RESERVED

140. RESERVED

141. DFARS 252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)

(a) Definitions. As used in this clause--

(1) "Storage" means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

(2) "Toxic or hazardous materials" means:

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR Part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

142. DFARS 252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (OCT 2004)

(a) *Definitions.* As used in this clause--

"Indian" means --

(1) Any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c); and

(2) Any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C. Chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

"Interested party" means a contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

"Native Hawaiian small business concern" means an entity that is--

(1) A small business concern as defined in Section 3 of the Small Business Act (15 U.S.C. 632) and relevant implementing regulations; and

(2) Owned and controlled by a Native Hawaiian as defined in 25 U.S.C. 4221(9).

(b) The Contractor shall use its best efforts to give Indian organizations, Indian-owned economic enterprises, and Native Hawaiian small business concerns the maximum practicable opportunity to participate in the subcontracts it awards, to the fullest extent consistent with efficient performance of the contract.

(c) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status.

(d) In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to--

(1) For matters relating to Indian organizations or Indian-owned economic enterprises:

U.S. Department of the Interior
Bureau of Indian Affairs
Attn: Chief, Division of Contracting and
Grants Administration
1849 C Street NW, MS-2626-MIB

Washington, DC 20240-4000.

The BIA will determine the eligibility and will notify the Contracting Officer.

(2) For matters relating to Native Hawaiian small business concerns:

Department of Hawaiian Home Lands
PO Box 1879
Honolulu, HI 96805.

The Department of Hawaiian Home Lands will determine the eligibility and will notify the Contracting Officer.

(e) No incentive payment will be made-

- (1) While a challenge is pending; or
- (2) If a subcontractor is determined to be an ineligible participant.

(f)(1) The Contractor, on its own behalf or on behalf of a subcontractor at any tier, may request an incentive payment in accordance with this clause.

(2) The incentive amount that may be requested is 5 percent of the estimated cost, target cost, or fixed price included in the subcontract at the time of award to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(3) In the case of a subcontract for commercial items, the Contractor may receive an incentive payment only if the subcontracted items are produced or manufactured in whole or in part by an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(4) The Contractor has the burden of proving the amount claimed and shall assert its request for an incentive payment prior to completion of contract performance.

(5) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the estimated cost, target cost, or fixed price included in the subcontract awarded to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(6) If the Contractor requests and receives an incentive payment on behalf of a subcontractor, the Contractor is obligated to pay the subcontractor the incentive amount.

(g) The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts exceeding \$500,000.
(End of clause)

143. DFARS 252.227-7022

GOVERNMENT RIGHTS (UNLIMITED) (MAR 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer. (End of clause)

144. DFARS 252.227-7023 GOVERNMENT (MAR 1979)

DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the

Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

145. DFARS 252.227-7033 RIGHTS IN SHOP DRAWINGS (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail

(i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

146. DFARS 252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

When the allowability of costs under this contract is determined in accordance with part 31 of the Federal Acquisition Regulation (FAR) allowability shall also be determined in accordance with part 231 of the DoD FAR Supplement, in effect on the date of this contract.

147. DFARS 252.232-7005 REIMBURSEMENT OF SUBCONTRACTOR ADVANCE PAYMENTS--DOD PILOT MENTOR-PROTEGE PROGRAM (SEP 2001)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a protege firm, pursuant to an approved mentor-protege agreement, provided--

(1) The Contractor's subcontract with the protege firm includes a provision substantially the same as FAR 52.232-12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR Subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if they were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1443, Contractor's Request for Progress Payment, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1443 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.
(End of clause)

148. DFARS 252.232-7010 LEVIES ON CONTRACT PAYMENTS (DEC 2006)

(a) 26 U.S.C. 6331(h) authorizes the Internal Revenue Service (IRS) to continuously levy up to 100 percent of contract payments, up to the amount of tax debt.

(b) When a levy is imposed on a payment under this contract and the Contractor believes that the levy may result in an inability to perform the contract, the Contractor shall promptly notify the Procuring Contracting Officer in writing, with a copy to the Administrative Contracting Officer, and shall provide--

(1) The total dollar amount of the levy;

(2) A statement that the Contractor believes that the levy may result in an inability to perform the

contract, including rationale and adequate supporting documentation; and

(3) Advice as to whether the inability to perform may adversely affect national security, including rationale and adequate supporting documentation.

(c) DoD shall promptly review the Contractor's assessment, and the Procuring Contracting Officer shall provide a written notification to the Contractor including--

(1) A statement as to whether DoD agrees that the levy may result in an inability to perform the contract; and

(2)(i) If the levy may result in an inability to perform the contract and the lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or

(ii) If the levy may result in an inability to perform the contract but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.

(d) Any DoD determination under this clause is not subject to appeal under the Contract Disputes Act.

(End of clause)

149. DFARS 252.236-7000 MODIFICATION OF PROPOSALS - PRICE BREAKDOWN (DEC 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown--

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for--

(i) Material;

(ii) Labor,

(iii) Equipment;

(iv) Subcontracts; and

(2) Most cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

150. DFARS 252.236-7001 CONTRACT DRAWINGS AND SPECIFICATIONS (AUG 2000)

(a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.

(b) The Contractor shall--

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph

(b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general--

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title	File	Drawing No.
Not Applicable – The drawings will be provided on each individual task order.		
(End of clause)		

151. DFARS 252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR Part 31 and DRARS Part 231, in effect on the date of this contract, apply.

152. DFARS 252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including--

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation; and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to----

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

(End of clause)

153. DFARS 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL

COMPONENTS (DOD CONTRACTS) (AUG 2009)

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items clause of this contract (Federal Acquisition Regulation 52.244-6), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

(a) 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (10 U.S.C. 2533b).

(b) 252.236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (Pub. L. 110-329, Division E, Section 108).

(c) 252.246-7003 Notification of Potential Safety Issues.

(d) 252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

(e) 252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

154. DFARS 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) Definitions.

As used in this clause--

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) "Department of Defense" (DOD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime Contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) (1) The Contractor shall use U.S. -flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessel if--

(i) This Contract is a construction contract; or

(ii) The supplies being transported are--

(A) Noncommercial items; or

(B) Commercial items that--

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that--

- (1) U.S.-flag vessels are not available for timely shipment;
- (2) The freight charges are inordinately excessive or unreasonable; or
- (3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum--

- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number, and
- (7) A documented description of efforts made to secure U.S.-flag vessels, including points of

contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information--

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of the steamship company.

(f) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief--

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format;

ITEM	CONTRACT
DESCRIPTION	LINE ITEMS QUANTITY

TOTAL

(g) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) The Contractor shall include this clause, including this paragraph (h) in all subcontracts under this contract that--

- (1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and
- (2) Are for a type of supplies described in paragraph (b) (2) of this clause.

155. DFARS 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor--

- (1) Shall notify the Contracting Officer of that fact; and
- (2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) (1) The Contractor shall use U.S. -flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessel if--

- (i) This Contract is a construction contract; or
- (ii) The supplies being transported are-
 - (A) Noncommercial items; or
 - (B) Commercial items that-
 - (1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);
 - (2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or
 - (3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

156. LCL PIL 2003-06 CONTRACTOR EMPLOYEES REQUIRING ACCESS TO AUTOMATED INFORMATION SYSTEMS (AIS)

All Contractor (and subcontractor) employees (U.S. citizens and Non- U.S. citizens) working under this contract (to include grants, cooperative agreements and task orders) who require access to Automated Information Systems (AIS), (stand alone computers, network computers/systems, e-mail) shall, at a minimum, be designated into an ADP-III position (non-sensitive) in accordance with DoD 5220-22-R, Industrial Security Regulation (<http://www.dtic.mil/whs/directives/>).

The investigative requirements for an ADP-III position are a favorable National Agency Check (NAC), SF-85P, Public Trust Position.

SF-85P is available at: <http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0>

Under "Forms Library",

Click on "Standard Forms"

Click on "SF 85P Questionnaire for Public Trust Positions"

SF 85P is available in either Screen-Fillable FormNet Version or Adobe Acrobat version.

Proof of a favorable NAC shall be submitted to USACE, Omaha District Security Officer, ATTN: CENWO-SL, 1616 Capitol Ave, Omaha, NE 68102-4901, within three (3) working days after award of any contract or task order, and shall be submitted prior to the individual being permitted access to an AIS.

a. Contractors who have a commercial or government entity (CAGE) Code and Facility Security Clearance should submit forms through their Facility Security Office, who shall forward results of the NAC to the Omaha District Security Officer (address above).

b. For those contractors who do not have a CAGE Code or Facility Security Clearance, the SF 85-P and 2 copies of the FD-258 (Fingerprint Cards) shall be completed and submitted to the Omaha District Security Officer (address above.) These must be mailed or hand-delivered, as original signatures are required. Fingerprint cards are available upon request and may be taken to any local law enforcement center for completion. For those in the Omaha, Nebraska area, fingerprint cards may be completed by contacting the Omaha District Human Resources Office, (402) 995-2516.

In accordance with Engineering Regulation, ER 380-1-18 (<http://140.194.76.129/publications/eng-regs/>), Section 4, foreign nationals who work on Corps of Engineers' contracts or task orders shall be approved by the HQUSACE Foreign Disclosure Officer or higher before beginning work on the contract/task order. This regulation includes subcontractor employees. (NOTE: exceptions to the above requirement include foreign nationals who perform janitorial and/or ground maintenance services.) The Contractor shall submit to the Omaha District Contracting Office, ATTN: (CENWO-CT) the names of all foreign nationals proposed for performance under this contract/task order, along with documentation to verify that he/she was legally admitted into the United States and has authority to work and/or go to school in the US. Such documentation may include a US passport, Certificate of US citizenship (INS Form N-560 or N-561), Certificate of Naturalization (INS Form N-550 or N-570), foreign passport with I-551 stamp or attached INS Form I-94 indicating employment authorization, Alien Registration Receipt Card with photograph (INS Form I-151 or I-551), Temporary Resident Card (INS Form I-688), Employment Authorization Card (INS Form I-688A), Reentry Permit (INS Form I-327), Refugee Travel Document (INS Form I-571), Employment Authorization Document issued by the INS which contains a photograph (INS Form I-688B). INS forms are available at <http://uscis.gov/graphics/formsfee/forms/index.htm>.

Compliance with this provision is mandatory (only if AIS access is required). Offeror should check the appropriate box below and return with offer or quote to Contracting Office.

- ☐ HAVE FAVORABLE SF-85P(s)*
- ☐ SF85-P(s) TO BE INITIATED UPON AWARD
- ☐ SF85-P(s) PAPERWORK IN PROGRESS
- ☐ DO NOT INTEND TO COMPLY

*Must be accomplished for each employee who will be accessing Government AIS under this action.

(End of Provision)(PIL 2003-06, 19 Feb 03)

SECTION TABLE OF CONTENTS

DIVISION 00 - PROCUREMENT AND CONTRACTING REQUIREMENTS

SECTION 00 73 00

SPECIAL CONTRACT REQUIREMENTS

4/07, Rev 10/09

PART 1 GENERAL

- 1.1 (FAR 52.211-10) COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)
- 1.2 (FAR 52.211-12) LIQUIDATED DAMAGES-CONSTRUCTION (SEPT 2000)
- 1.3 (FAR 52.211-13) TIME EXTENSIONS (SEPT 2000)
- 1.4 (FAR 52.211-14) NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE, EMERGENCY PREPAREDNESS, AND ENERGY PROGRAM USE (APR 2008)
- 1.5 (FAR 52.219-6) NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JUNE 2003)
- 1.6 (FAR 52.222-23) NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)
- 1.7 (FAR 52.236-1) PERFORMANCE OF WORK BY CONTRACTOR (APR 1984)
- 1.8 (FAR 52.236-4) PHYSICAL DATA (APR 1984)
- 1.9 (FAR 52.236.16) QUANTITY SURVEYS (APR 1984) ALT I (APR 1984)
- 1.10 (EFARS 52.231-5000) EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE (MAR 1995)
- 1.11 (EFARS 52.232-5000) PAYMENT FOR MATERIALS DELIVERED OFFSITE (MAR 1995)

PART 2 NOT USED

PART 3 NOT USED

-- End of Section Table of Contents --

SECTION 00 73 00

SPECIAL CONTRACT REQUIREMENTS
4/07, Rev 10/09

PART 1 GENERAL

1.1 (FAR 52.211-10) COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

The Contractor shall be required to (a) commence work under this contract within ten (10) calendar days after the date of receipt by him of Notice to Proceed, (b) prosecute said work diligently, and (c) complete the entire work ready for use not later than the number of calendar days (which includes design, design reviews and all construction activities) required in each Task order. The time stated for completion of the project shall include final cleanup of the premises.

1.2 (FAR 52.211-12) LIQUIDATED DAMAGES-CONSTRUCTION (SEPT 2000)

(a) If the Contractor fails to complete the work within the time, the Contractor shall pay liquidated damages to the Government in the amount indicated in each task order for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

1.3 (FAR 52.211-13) TIME EXTENSIONS (SEPT 2000)

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

1.4 (FAR 52.211-14) NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE, EMERGENCY PREPAREDNESS, AND ENERGY PROGRAM USE (APR 2008)

Any contract awarded as a result of this solicitation will be DO rated order certified for national defense, emergency preparedness, and energy program use under the Defense Priorities and Allocations System (DPAS) (15 CFR 700), and the Contractor will be required to follow all of the requirements of this regulation.
(End of provision)

1.5 (FAR 52.219-6) NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JUNE 2003)

(a) Definition. "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and

operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) General.

(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) Agreement. A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

1.6 (FAR 52.222-23) NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for Minority Participation for Each Trade	Goals for Female Participation for Each Trade
*****	*****

By Task Order

6.9

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs Office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to

project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the -

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is [By task order], which [By task Order] county is a part of.

1.7 (FAR 52.236-1) PERFORMANCE OF WORK BY CONTRACTOR (APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least twenty (20) percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

1.8 (FAR 52.236-4) PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractors' information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by surveys, borings or information included in each task order. If borings are provided, the data shown graphically and by symbol for each respective boring represents the actual geologic features observed and logged at the location given on the drawings. While the borings are representative of subsurface conditions at their respective locations and for their respective vertical reaches, local minor variations characteristic of the subsurface materials of this region could occur.]

(b) Weather conditions shall have been investigated by the Contractor to satisfy himself as to the hazards likely to arise therefrom. Complete weather records and reports may be obtained from the local U.S. Weather Bureau.

(c). Transportation facilities shall have been investigated by the Contractor to satisfy himself as to the existence of access

highways and railroad facilities.

1.9 (FAR 52.236.16) QUANTITY SURVEYS (APR 1984) ALT I (APR 1984)

(a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

(b) The Contractor shall conduct the original and final surveys and surveys for any periods for which progress payments are requested. All these surveys shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance. The Government shall make such computations as are necessary to determine the quantities of work performed or finally in place. The Contractor shall make the computations based on the surveys for any periods for which progress payments are requested.

(c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer.

1.10 (EFARS 52.231-5000) EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE (MAR 1995)

(a) This clause does not apply to terminations. See 52.249-5000, Basis for settlement of proposals and FAR Part 49.

(b) Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a Contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the Contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series of equipment from the Contractor's accounting records, costs for that equipment shall be based upon the applicable provisions of EP 1110-1-8, "Construction Equipment Ownership and Operating Expense Schedule," Region [Included with each Task Order]. Copies of each regional schedule may be obtained through the following Internet site: <http://140.194.76.129/publications/eng-pamphlets/>. Working conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the Contracting Officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be developed using the formula provided in the schedule. For forward pricing, the Schedule in effect at the time of negotiations shall apply. For retrospective pricing, the Schedule in effect at the time the work was performed shall apply.

(c) Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36. Rates for equipment rented from an organization under common control, lease-purchase arrangements, and sale-leaseback arrangements will be determined using the schedule, except that actual rates will be used for equipment leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees.

(d) When actual equipment costs are proposed and the total amount of the pricing action exceeds the small purchase threshold, the contracting officer shall request the contractor to submit either certified cost or pricing data, or partial/limited data as appropriate. The data shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet.

1.11 (EFARS 52.232-5000) PAYMENT FOR MATERIALS DELIVERED OFFSITE (MAR 1995)

(a) Pursuant to FAR clause 52.232-5, Payments Under Fixed Priced Construction Contracts, materials delivered to the contractor at locations other than the site of the work may be taken into consideration in making payments if included in payment estimates and if all the conditions of the General Provisions are fulfilled. Payment for items delivered to locations other than the work site will be limited to: (1) materials required by the technical provisions; or (2) materials that have been fabricated to the point where they are identifiable to an item of work required under this contract.

(b) Such payment will be made only after receipt of paid or receipted invoices or invoices with canceled check showing title to the items in the prime contractor and including the value of material and labor incorporated into the item. Payment for materials delivered off-site includes petroleum products. (List additional items for which payments will be made for off-site delivery.)

PART 2 NOT USED

PART 3 NOT USED

-- End of Section --

SECTION TABLE OF CONTENTS

DIVISION 01 - GENERAL REQUIREMENTS

SECTION 01 30 00.24

OTHER ADMINISTRATIVE AND SPECIAL REQUIREMENTS

4/07; Rev 09/09

PART 1 GENERAL

- 1.1 COMPLETION OF WORK
 - 1.1.1 Sequence of Design-Construction
- 1.2 CONTRACTOR PERFORMANCE EVALUATIONS
- 1.3 EXCEPTION TO COMPLETION TIME AND LIQUIDATED DAMAGES
- 1.4 DESIGN-BUILD CONTRACT - ORDER OF PRECEDENCE
- 1.5 RESPONSIBILITY OF THE CONTRACTOR FOR DESIGN
- 1.6 BUY AMERICAN ACT
 - 1.6.1 General Requirements
 - 1.6.2 Exceptions
- 1.7 SCHEDULE AND GENERAL INSTRUCTIONS
 - 1.7.1 Contract Limitation
 - 1.7.1.1 Minimum Amount
 - 1.7.1.2 Maximum Amount
 - 1.7.2 Performance of Work
 - 1.7.3 Description of Work Order
 - 1.7.3.1 Commencement of Work
 - 1.7.3.2 Notice of Completion of Task Order
 - 1.7.4 Availability of Funds
 - 1.7.5 Restrictions on Subcontractor Sales to the Government
 - 1.7.6 Not Used
 - 1.7.7 Site Visit (Construction) (FEB 1995)
- 1.8 MISSION DELAY DAYS
- 1.9 TASK ORDER DRAWINGS AND SPECIFICATIONS
 - 1.9.1 SETS FURNISHED
 - 1.9.2 DRAWING REPRODUCTION AND DISTRIBUTION
 - 1.9.3 NOTIFICATION OF DISCREPANCIES
 - 1.9.4 OMISSIONS
- 1.10 CONCURRENT CONSTRUCTION
- 1.11 PAYMENT
 - 1.11.1 PROMPT PAYMENT ACT
 - 1.11.2 PAYMENTS FOR MODIFICATIONS
 - 1.11.3 PAYMENT FOR MATERIALS DELIVERED OFFSITE
- 1.12 AVAILABILITY OF UTILITY SERVICES
- 1.13 UTILITY SERVICE INTERRUPTIONS
- 1.14 DIGGING PERMITS AND ROAD CLOSINGS
- 1.15 TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER
- 1.16 INSURANCE REQUIRED
- 1.17 SECURITY REQUIREMENTS
 - 1.17.1 Contractor's Employee Identification
 - 1.17.2 Entry Requirements
- 1.18 CONTRACTOR QUALITY CONTROL (CQC)
- 1.19 NONDOMESTIC CONSTRUCTION MATERIALS
- 1.20 DAILY WORK SCHEDULES AND WEEKLY COORDINATION MEETINGS
- 1.21 AS-BUILT DRAWINGS

1.22	SIGN
1.23	CONTRACTOR FURNISHED EQUIPMENT DATA
1.24	ACCOMMODATIONS FOR GOVERNMENT INSPECTORS
1.25	SPECIAL INSTRUCTIONS FOR PROGRESS CHARTS
1.26	ASBESTOS AND LEAD
1.27	PROFIT
1.28	LABOR CONDITIONS APPLICABLE TO TEMPORARY FACILITIES
1.29	WAGE RATE APPLICATION
1.30	FEDERAL HOLIDAYS
1.31	BASE HOURS
1.32	DD FORM 1354, TRANSFER AND ACCEPTANCE OF MILITARY REAL PROPERTY
1.33	APPLICATION OF "VALUE ENGINEERING" CLAUSE

PART 2 NOT USED

PART 3 NOT USED

-- End of Section Table of Contents --

SECTION 01 30 00.24

OTHER ADMINISTRATIVE AND SPECIAL REQUIREMENTS
4/07; Rev 09/09

PART 1 GENERAL

1.1 COMPLETION OF WORK

See Section 00 73 00 SPECIAL CONTRACT REQUIREMENTS, FAR 52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984).

1.1.1 Sequence of Design-Construction

(a) After receipt of the Contract Notice to Proceed (NTP), the Contractor shall initiate design, comply with all design submission requirements as covered in Division 01 General Requirements of the advertised Solicitation, and obtain Government review of each submission. No construction may be started until the Government reviews and approves the Final Design submission and determines it satisfactory for purposes of beginning construction. The Contractor has the option (per each Task Order) to submit the design as an entirely complete design package (design analysis, plans, and specifications and other design deliverables) or as two (2) separate complete design packages (design analysis, plans, and specifications and other design deliverables), one for the site work, foundations, long lead items and utilities and one for all other work. Each package will require the same design submittals, design reviews and design review conferences as set forth in the Contract. The Government will not grant any time extension for any design resubmittal required when, in the opinion of the Contracting Officer, the initial submission failed to meet the minimum quality requirements as set forth in the Contract.

(b) If the Government allows the Contractor to proceed with limited construction based on pending minor revisions to the reviewed 100 Percent Corrected Design submission, no payment will be made for any in-place construction related to the pending revisions until they are completed, resubmitted and are satisfactory to the Government. Proceeding with limited construction requires written authorization by the Contracting Officer.

1.2 CONTRACTOR PERFORMANCE EVALUATIONS

In accordance with the provisions of Subpart 36.201 (Evaluation of Contractor Performance) of the Federal Acquisition Regulation (FAR), construction contractor's performance shall be evaluated throughout the performance of the contract. The United States Army Corps of Engineers (USACE) follows the procedures outlined in Engineering Regulation 415-1-17 to fulfill this FAR requirement. For construction contracts awarded at or above \$100,000.00, the USACE will evaluate Contractor's performance and prepare a performance report using the Construction Contractor Appraisal Support System (CCASS), which is now a web-based system. After an evaluation (interim or final) is written up by the USACE, the Contractor will have the ability to access, review and comment on the evaluation for a period of 30 days. Accessing and using CCASS requires specific software, called PKI certification, which is installed on the user's computer. The certification is a Department of Defense requirement and was implemented to

provide security in electronic transactions. The certification software could cost approximately \$110 - \$125 per certificate per year and is purchased from an External Certificate Authorities (ECA) vendor. Current information about the PKI certification process and for contacting vendors can be found on the web site: <http://www.cpars.csd.disa.mil/>. If the Contractor wishes to participate in the performance evaluation process, access to CCASS and PKI certification is the sole responsibility of the Contractor.

1.3 EXCEPTION TO COMPLETION TIME AND LIQUIDATED DAMAGES

In case the Contracting Officer determines that seeding, sodding, and/or planting and/or the specified maintenance thereof is not feasible during the construction period, such work will be excepted from the completion time and liquidated damages. This work shall be accomplished during the first seeding, sodding, and/or planting period and the specified maintenance period following the completion date.

1.4 DESIGN-BUILD CONTRACT - ORDER OF PRECEDENCE

(a) The contract includes the standard contract clauses and schedules current at the time of contract award. It entails (1) the solicitation in its entirety, including all drawings, cuts, and illustrations, and any amendments, and (2) the successful offeror's accepted proposal. The contract constitutes and defines the entire agreement between the Contractor and the Government. No documentation shall be omitted which in any way bears upon the terms of that agreement.

(b) In the event of conflict or inconsistency between any of the provisions of this contract, precedence shall be given in the following order:

(1) Betterments: Any portion of the accepted proposal, which both conform to and exceed the provisions of the solicitation. "Betterment" is defined as any product, component, or system, which exceeds the requirements stated in the solicitation.

(2) The provisions of the solicitation. (See also Contract Clause entitled "SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION".)

(3) All other provisions of the accepted proposal.

(4) Any design products including, but not limited to, plans, specifications, engineering studies and analyses, shop drawings, equipment installation drawings, etc.. These are "deliverable" under the contract and are not part of the contract itself. Design products must conform with all the provisions of the contract, in the order of precedence herein.

(c) Where conflicts between the solicitation requirements and the UFGS guide specifications (available at: http://www.wbdg.org/ccb/browse_org.php?o=70) exist, the Contractor shall point out the conflict and ask for direction. Any installation requirements within solicitation requirements, but not contained in the UFGS guide specifications, shall be added to the specifications or shown on the drawings.

1.5 RESPONSIBILITY OF THE CONTRACTOR FOR DESIGN

(a) The Contractor shall be responsible for the professional quality,

technical accuracy, and the coordination of all designs, drawings, specifications, and any other non-construction services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiency in its designs, drawings, specifications, and other non-construction services.

(b) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of the services described in paragraph (a) furnished under this contract.

(c) The rights and remedies of the Government provided under this contract are in addition to any other rights and remedies provided by law.

1.6 BUY AMERICAN ACT

1.6.1 General Requirements

The Contractor shall obtain materials in compliance with the Buy American Act per the requirements of Section 00 72 00 CONTRACT CLAUSES. The Buy American Clauses to be utilized for this contract are based on the estimated acquisition value of the solicitation, which will be provided in each Task Order. Buy American Act clauses are listed below:

FAR 52.225-9 BUY AMERICAN ACT-CONSTRUCTION MATERIALS and FAR 52.225-10 NOTICE OF BUY AMERICAN ACT REQUIREMENT-CONSTRUCTION MATERIALS are applicable For Contracts less than \$7.443 million.

FAR 52.225-11 BUY AMERICAN ACT-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (For Contracts more than \$7.443 million)
ALTERNATE I {For Contracts between \$7.443 and \$8.817449 Million) and
FAR 52.225-12 NOTICE OF BUY AMERICAN ACT REQUIREMENT-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (Applicable with FAR 52.225-11)
ALTERNATE II (For Contracts Between \$7.443 and \$8.817449 Million).

1.6.2 Exceptions

The Contracting Officer has determined foreign construction materials listed below may be acquired without regard to the restrictions of the Buy American Act:

Carbon Monoxide Detectors
Fluorescent Lamps
Composting Toilet
Type A (woven mat) Bank Stabilization Fabric
Ceiling Fans with Light Kits
Backup ring (HDPE flange adaptor consisting of a thermoplastic stub end, and ductile iron flange)
Chrome/Zinc Residential Grade Bathroom Accessories
GFCI Receptacles
Swivel Hangers for Mechanical Piping
Sprinkler Escutcheons
Dry Wall Steel Stud Screws, Track Fasteners/Pan heads and Concrete Pins
Wall-mounted Split-System AC units (5 tons or less)
Athletic Flooring

Door Chimes & Transformers
Variable Refrigerant Volume Condensing Unit & Fan Coil System (VAV)

1.7 SCHEDULE AND GENERAL INSTRUCTIONS

1.7.1 Contract Limitation

1.7.1.1 Minimum Amount

See Section 00 72 00 CONTRACT CLAUSES FAR Clause 52.216-19 ORDER LIMITATIONS.

1.7.1.2 Maximum Amount

See Section 00 72 00 CONTRACT CLAUSES FAR Clause 52.216-19 ORDER LIMITATIONS.

1.7.2 Performance of Work

The Contractor shall, upon receipt of duly executed task orders, perform all work required of this contract for projects described in said task orders. The Contractor shall complete all work under this contract within the period of time specified in task orders to be issued except that no task orders shall be issued hereunder after the expiration of this contract.

1.7.3 Description of Work Order

- a. Task Orders will be issued to MATOC Contract Holders.
- b. As Needed, prior to receiving offers, site walk will be conducted.
- c. Task Orders will be issued on a weighted (Technical/Cost) Best Value basis or low price basis. The basis of selection will be identified in each Task Order.
- d. Work is to be accomplished in compliance with all Federal, State, local and installation specific regulations.

1.7.3.1 Commencement of Work

The Contractor shall commence any mobilization and familiarization activities prior to actual work on individual task orders. However, within 30 calendar days, or less if mutually agreed upon, the Contractor shall be fully operational and working at the site on any required task orders. The Contractor shall be required to commence work required by a task order at the time specified on the task order, prosecute the work, and complete the entire work not later than the completion time specified on the task order. The time stated for completion shall include final cleanup of the premises.

1.7.3.2 Notice of Completion of Task Order

The Contractor shall notify the Contracting Officer or the COR upon completion of each individual task order. The Contractor shall give advance notice of the date the work will be fully completed and ready for final inspection. See CONTRACT CLAUSES clause "Inspection of Construction"

for details on inspection and acceptance criteria.

1.7.4 Availability of Funds

Funds will be obligated by individual Task Orders issued under this contract.

1.7.5 Restrictions on Subcontractor Sales to the Government

a. Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, not otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

b. The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

c. The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract.

1.7.6 Not Used

1.7.7 Site Visit (Construction) (FEB 1995)

a. The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

b. Each subsequent Task Order will provide a Point of Contact for any Site Visits at a particular location.

1.8 MISSION DELAY DAYS

The Contractor shall anticipate a work delay of up to [As indicated in each Task Order, if applicable)] days during the contract period due to Using Service operations. The Contractor will be notified one week in advance of these interruptions. This time is included in the overall completion time stated.

1.9 TASK ORDER DRAWINGS AND SPECIFICATIONS

1.9.1 SETS FURNISHED

The Contractor shall be responsible for making copies of specifications and drawings including amendments.

1.9.2 DRAWING REPRODUCTION AND DISTRIBUTION

If required by Task Order, the Contractor will be responsible for reproduction of Contract Drawing Sets to a distribution list provided in

Task Order.

The Contractor shall prepare as-built drawings as defined in Section Section 01 78 39.00 24 AS-BUILT DRAWINGS.

1.9.3 NOTIFICATION OF DISCREPANCIES

The Contractor shall check all hard copy or CD-ROM drawing files furnished him immediately upon their receipt and shall promptly notify the Contracting Officer of any discrepancies. Dimensions marked on drawings shall be followed in lieu of scale measurements. Enlarged plans and details shall govern where the same work is shown at smaller scales. All scales shown are based on a standard drawing size as indicated in each Task Order. If any other size drawings are furnished or plotted the contractor shall adjust the scales accordingly. The Contractor shall also advise his sub-contractors of the above. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

1.9.4 OMISSIONS

Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

1.10 CONCURRENT CONSTRUCTION

Construction work closely related to and/or located at the site of the work under a concurrent contract, may be in progress simultaneously with work under this contract. The location of this concurrent work will be shown on the Task Order drawings or described in the Task Order. The Contractor shall cooperate with others as necessary in the interest of timely completion of all work. In the event of interference, the Contracting Officer shall be notified immediately for resolution and his decision shall be final.

1.11 PAYMENT

1.11.1 PROMPT PAYMENT ACT

Pay requests authorized in CONTRACT CLAUSES clause: "Payments Under Fixed-Price Construction Contracts", will be paid pursuant to the clause, "Prompt Payment for Construction Contracts". Pay requests will be submitted on ENG Form 93 and 93a, "Payment Estimate-Contract Performance" and "Continuation". All information and substantiation required by the identified contract clauses will be submitted with the ENG Form 93, and the required certification will be included on the last page of the ENG Form 93a, signed by an authorized contractor official and dated when signed. The designated billing office is the Office of the Area Engineer or Project Manager.

1.11.2 PAYMENTS FOR MODIFICATIONS

Payments may be made for cost bearing change orders within the scope of the contract only to the extent funds are authorized in the order on a two-part

modification. Contractor pricing proposed must be submitted at the earliest possible time after the change order is issued, or at a specific time as directed by the Contracting Officer. At the discretion of the Contracting Officer, any and all payments may be withheld on the modification until the Contractor has submitted a qualifying price proposal, in as much detail as required by the Contracting Officer, and the final price has been agreed.

1.11.3 PAYMENT FOR MATERIALS DELIVERED OFFSITE

See Section 00 73 00 SPECIAL CONTRACT REQUIREMENTS EFARS 52.232-5000
PAYMENT FOR MATERIALS DELIVERED OFFSITE (MAR 1995)

1.12 AVAILABILITY OF UTILITY SERVICES

All reasonably required amounts of domestic water and electricity will be made available to the Contractor by the Government from existing system outlets and supplies. The Contractor shall, at his own expense, make all temporary connections and install distribution lines. The Contractor shall furnish to the Contracting Officer a complete system layout drawing showing type of materials to be used and method of installation for all temporary electrical systems. The method of determining the amount of water and electricity to be used by the Contractor shall be specified in each individual Task Order. All temporary lines shall be maintained by the Contractor in a workmanlike manner satisfactory to the Contracting Officer and shall be removed by the Contractor in like manner prior to final acceptance of the construction. Normal quantities of electricity and water used to make final tests of completely installed systems will be furnished by the Government.

1.13 UTILITY SERVICE INTERRUPTIONS

If applicable, individual Task Order will indicate any specific requirements.

1.14 DIGGING PERMITS AND ROAD CLOSINGS

Unless indicated otherwise in Task Order, the Contractor shall allow 14 calendar days from date of written application to receive permission to dig and to close roads. Roads shall only be closed one lane at a time and vehicular traffic shall be allowed to pass through the construction area. Work on or near roadways shall be flagged in accordance with the safety requirements in Safety and Health Requirements Manual EM 385-1-1, which forms a part of these specifications. Work located along the alert force route shall not cause blockage and the Contractor shall maintain unobstructed access for alert force traffic at all times.

1.15 TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER

a. This clause specifies the procedure for the determination of time extensions for unusually severe weather in accordance with the contract clause entitled "Default: (Fixed-Price Construction)." In order for the Contracting Officer to award a time extension under this clause, the following conditions must be satisfied:

- (1) The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any

given month.

(2) The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the contractor.

b. The monthly anticipated adverse weather days will be based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location and will constitute the base line for monthly weather time evaluations. The contractor's progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

c. Upon acknowledgment of the Notice to Proceed (NTP) and continuing throughout the contract, the contractor will record on the daily CQC report, the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical activities for 50 percent or more of the contractor's scheduled work day. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in paragraph b. above, the contracting officer will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and issue a modification in accordance with the contract clause entitled "Default (Fixed Price Construction)". (ER 415-1-15)

1.16 INSURANCE REQUIRED

In accordance with CONTRACT CLAUSES clause: "Insurance Work on a Government Installation," the Contractor shall procure the following minimum insurance:

Type	Amount
Workmen's Compensation and Employer's Liability Insurance	\$100,000
General Liability Insurance	\$500,000 per occurrence
Automobile Liability Insurance	
Bodily injury	\$200,000 per person and \$500,000 per occurrence
Property damage	\$ 20,000 per occurrence

(Coverages per FAR 28.307-2)

1.17 SECURITY REQUIREMENTS

1.17.1 Contractor's Employee Identification

The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon release of any employees. When the contract involves work in restricted security areas, only employees who are U.S. citizens will be permitted to enter. Proof of U.S. citizenship is required prior to entry. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on

the project. (Based on FAR 52.204-2)

1.17.2 Entry Requirements

Entry requirements shall be as the individual locations in each Task Order require.

1.18 CONTRACTOR QUALITY CONTROL (CQC)

See Section 01 45 01 USACE QUALITY CONTROL.

1.19 NONDOMESTIC CONSTRUCTION MATERIALS

The List of nondomestic construction materials or their components included in the list set forth in paragraph 25.104 of the Federal Acquisition Regulation does not apply to the requirements of the contract clause entitled "Buy American Act Construction Materials".

1.20 DAILY WORK SCHEDULES AND WEEKLY COORDINATION MEETINGS

In order to closely coordinate work under each Task Order, the Contractor shall prepare a written agenda/meeting minutes and attend a weekly coordination meeting with the Contracting Officer and Using Service at which time the Contractor shall submit for coordination and approval, his proposed daily work schedule for the next two week period. The Contractor shall provide a copy of modifications (MODs), Serial Letters, Requests for Information (RFIs) and any other information that is needed in the minutes of the meeting. Required temporary utility services, time and duration of interruptions, and protection of adjoining areas shall be included with the Contractor's proposed 2-week work schedule. At this meeting, the Contractor shall also submit his schedule of proposed dates and times of all preparatory inspections to be performed during the next 2 weeks. Coordination action by the Contracting Officer relative to these schedules will be accomplished during these weekly meetings. Daily reports shall be completed and given to the Contracting Officer or Representative within 24 hours of work

1.21 AS-BUILT DRAWINGS

See SECTION 01 78 39.00 24 - AS-BUILT DRAWINGS

1.22 SIGN

If required by Task Order, On commencement of work on this project, the Contractor shall furnish and erect the temporary sign in the location selected by the Contracting Officer near the project site. The Contractor shall maintain the sign in good condition through the project construction period. Upon completion of the project the Contractor shall remove the sign from the premises. Project Sign details will be included with each Task Order, if applicable.

1.23 CONTRACTOR FURNISHED EQUIPMENT DATA

See Section 01 78 36.00 24 WARRANTY OF CONSTRUCTION AND DESIGN for Contractor Furnished Equipment Data to be submitted as part of the Warranty Equipment Booklet.

1.24 ACCOMMODATIONS FOR GOVERNMENT INSPECTORS

The Contractor may be required to furnish a temporary office facility. Each Task Order will specify office requirements.

1.25 SPECIAL INSTRUCTIONS FOR PROGRESS CHARTS

To be submitted in accordance with the CONTRACT CLAUSES clause entitled "Schedule for Construction Contracts" shall indicate the required data for each of the principal features of the work. Contract changes or modifications will not include extensions of time unless the updated progress chart shows that the contract completion date is delayed due to the affect of the change on one or more principal features of the work.

1.26 ASBESTOS AND LEAD

a. The Contractor is warned that inhalation of asbestos and lead has been associated with health hazards.

b. Asbestos-containing materials may be identified in area(s) where contract work is to be performed, in accordance with each Task Order. All contract work activities where the potential exists for worker exposure to airborne asbestos fibers shall be performed in accordance with the requirements set forth in Section 02 82 14.00 10 ASBESTOS HAZARD CONTROL ACTIVITIES.

c. Lead may be determined to be present in some painted surfaces which are scheduled for removal/renovation. See requirements of each Task Order for locations and proper procedures.

1.27 PROFIT

a. Weighted guidelines method of determining profit shall be used on any equitable adjustment change order or modification issued under this contract. The profit factors shall be as follows:

Factor	Rate	Weight	Value
Degree of Risk	20	See Item	
Relative difficulty of work	15	b. below	
Size of Job	15		
Period of performance	15		
Contractor's investment	5		
Assistance by Government	5		
Subcontracting	25		
	100		

b. Based on the circumstances of each procurement action, each of the above factors shall be weighted from .03 to .12 as indicated below. The value shall be obtained by multiplying the rate by the weight. The value column when totaled indicates the fair and reasonable profit percentage under the circumstances of the particular procurement.

(1) Degree of Risk. Where the work involves no risk or the degree of risk is very small, the weighting should be .03; as the degree of risk increases, the weighting should be increased up to a maximum of .12. Lump sum items will have, generally, a higher weighted value than the unit price items for which quantities are provided. Other things to consider: the portion of the work to be done by subcontractors, nature of work, where work is to be performed, reasonableness of negotiated costs, amount of

labor included in costs, and whether the negotiation is before or after performance of work.

(2) Relative Difficulty of Work. If the work is most difficult and complex, the weighting should be .12 and should be proportionately reduced to .03 on the simplest of jobs. This factor is tied in to some extent with the degree of risk. Some things to consider: the nature of the work, by whom it is to be done, where, and what is the time schedule.

(3) Size of Job. All work not in excess of \$100,000 shall be weighted at .12. Work estimated between \$100,000 and \$5,000,000 shall be proportionately weighted from .12 to .05.

(4) Periods of Performance. Jobs in excess of 24 months are to be weighted at .12. Jobs of lesser duration are to be proportionately weighted to a minimum of .03 for jobs not to exceed 30 days. No weight where additional time not required.

(5) Contractor's Investment. To be weighted from .03 to .12 on the basis of below average, average, and above average. Things to consider: amount of subcontracting, mobilization payment item, Government furnished property, equipment and facilities, and expediting assistance.

(6) Assistance by Government. To be weighted from .12 to .03 on the basis of average to above average. Things to consider: use of Government-owned property, equipment and facilities, and expediting assistance.

(7) Subcontracting. To be weighted inversely proportional to the amount of subcontracting. Where 80 percent or more of the work is to be subcontracted, the weighting is to be .03 and such weighting proportionately increased to .12 where all the work is performed by the Contractor's own forces.

1.28 LABOR CONDITIONS APPLICABLE TO TEMPORARY FACILITIES

It is the position of the Department of Defense that the Davis-Bacon Act, 40 U.S.C. 276a is applicable to temporary facilities such as job headquarters, tool yards, batch plants, borrow pits, sandpits, rock quarries, and similar operations, provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the site of the work and are established after receipt of the proposal or bid. Clause "Payrolls and Basic Records" of the CONTRACT CLAUSES is applicable to such operations.

1.29 WAGE RATE APPLICATION

To be provided in each Task Order

1.30 FEDERAL HOLIDAYS

The following Federal legal holidays are observed by this installation:

New Year's Day	1 January
Martin Luther King's Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	4 July
Labor Day	First Monday in September
Columbus Day	Second Monday in October

Veterans Day	11 November
Thanksgiving Day	Fourth Thursday in November
Christmas Day	25 December

If a wage determination applies the number of holidays specified on it, it has priority over this clause.

1.31 BASE HOURS

Base operation hours are [to be indicated in each Task Order, if applicable] daily (Monday through Friday), excluding federal holidays. Access to the base during other times must be requested in writing from the Contracting Officer and will be granted only for extenuating circumstances. Federal Holidays and weekends are considered as scheduled non-workdays.

1.32 DD FORM 1354, TRANSFER AND ACCEPTANCE OF MILITARY REAL PROPERTY

Contractor shall prepare and provide, for acceptance, a completed DD Form 1354 "Transfer and Acceptance of Military Real Property" (Copy available at: <http://www.dtic.mil/whs/directives/infomgt/forms/ddforms1000-1499.htm>) with the [final design documents]. Fill out DD Form 1354 in accordance with DD 1354 Instructions, UFC 1-300-08, and Army Pamphlet 415-28 "Guide to Army Real Property Codes" (Copy dated 04/11/2006 is available at the following website: <http://www.apd.army.mil/> (Under "Official Publications", "Army Administrative Publications", Search for "415-28". The deliverable consists of an electronic and hard-copy of the DD 1354.

Contractor is required to present completed signed form at final inspection.

1.33 APPLICATION OF "VALUE ENGINEERING" CLAUSE

Contract Clauses clause "Value Engineering" is only applicable to changes to prescriptive RFP Task Order criteria requirements approved by the Contracting Officer, where there are cost savings to the Government. Any other changes, resulting in cost savings, which meet or exceed the requirements of the RFP Task Order, are not applicable to the Value Engineering clause.

PART 2 NOT USED

PART 3 NOT USED

-- End of Section --

SECTION TABLE OF CONTENTS

DIVISION 01 - GENERAL REQUIREMENTS

SECTION 01 33 00

SUBMITTAL PROCEDURES

01/08; 08/08 (OMH)

PART 1 GENERAL

- 1.1 DEFINITIONS
 - 1.1.1 Submittal Descriptions (SD)
 - 1.1.2 Approving Authority
 - 1.1.3 Work
 - 1.1.4 Administrative Submittals
- 1.2 SUBMITTAL CLASSIFICATION
 - 1.2.1 Designer of Record Approved
 - 1.2.2 Government Reviewed Design During Construction Submittals
 - 1.2.3 Government Reviewed Construction Submittals
 - 1.2.4 Supplemental Design Submittals
 - 1.2.5 Government Approved
 - 1.2.6 Information Only (FIO)
- 1.3 PREPARATION
 - 1.3.1 Transmittal Form
- 1.4 INFORMATION ONLY SUBMITTALS
- 1.5 VARIATIONS / SUBSTITUTION REQUESTS
 - 1.5.1 Considering Variations
 - 1.5.2 Proposing Variations
 - 1.5.3 Warranting That Variations Are Compatible
 - 1.5.4 Review Schedule Is Modified
- 1.6 SUBMITTAL REGISTER
 - 1.6.1 Use of Submittal Register
 - 1.6.2 Contractor Use of Submittal Register
 - 1.6.3 Approving Authority Use of Submittal Register
 - 1.6.4 Contractor Action Code and Action Code
 - 1.6.5 Copies Delivered to the Government
- 1.7 SUBMITTAL ITEM PROCEDURES
 - 1.7.1 Government Reviewed Design Construction Submittals
 - 1.7.2 Government Reviewed Construction, Government Approved (G-AO/G-RO) and FIO Submittals
 - 1.7.3 Certificates of Compliance
 - 1.7.4 Purchase Orders
 - 1.7.5 Operation and Maintenance Data/Manuals
 - 1.7.6 Interior/Exterior Finish Sample and Data
- 1.8 SCHEDULING
 - 1.8.1 Government Reviewed Design or Extension of Design
- 1.9 GOVERNMENT APPROVING AUTHORITY
- 1.10 DISAPPROVED OR REJECTED SUBMITTALS
- 1.11 APPROVED/ACCEPTED SUBMITTALS
- 1.12 APPROVED SAMPLES
- 1.13 WITHHOLDING OF PAYMENT
- 1.14 STAMPS

PART 2 PRODUCTS

PART 3 EXECUTION

-- End of Section Table of Contents --

SECTION 01 33 00

SUBMITTAL PROCEDURES
01/08; 08/08 (OMH)

PART 1 GENERAL

Attachments: Submittal Register (Sample Format)
ENG Form 4025, Transmittal Form

The Contractor is responsible for total management of his work including approval, scheduling, control, and certification of all submittals. The submittal management system provided in these specifications is intended to be a complete system for the Contractor to use to control the quality of materials, equipment and workmanship provided by manufacturers, fabricators, suppliers and subcontractors. The Contractor shall review each submittal for contract compliance. This review is based on the construction drawings and specifications. **Compliance with the Buy American Act is to be included in this review. The Contractor must provide the country of origin on ENG Form 4025 for each item submitted.** The Submittal Register (ENG Form 4288) will be utilized to log and monitor all submittal activities. No construction or installation activities are to be performed until required approvals and Government compliance reviews of applicable submittals have been made. Check to assure that all materials and/or equipment have been tested, submitted and approved during the preparatory phase of quality control inspections. Coordinate all submittals with the Contractor's Designer of Record (A-E). Approval by the Contractor's Designer means that the submittal is in compliance with the Construction Set design submittal.

Contractor's and the Designer of Record, if applicable, to check and approve all items prior to submittal and stamp, sign, and date indicating action taken. Proposed deviations from the contract requirements are to be clearly identified. Include within submittals items such as: Contractor's, manufacturer's, or fabricator's drawings; descriptive literature including (but not limited to) catalog cuts, diagrams, operating charts or curves; test reports; test cylinders; samples; O&M manuals (including parts list); certifications; warranties; and other such required submittals.

This section includes administrative and procedural requirements for construction submittals presented by the Contractor after the construction set plans and specifications have been accepted by the government. This section also includes requirements for developing, submitting and maintaining a "Submittal Register".

The Contracting Officer may request submittals in addition to those specified when deemed necessary to adequately describe the work covered in the respective sections.

Units of weights and measures used on all submittals are to be the same as those used in the contract drawings.

Each submittal is to be complete and in sufficient detail to allow ready determination of compliance with contract requirements.

Submittals requiring Government approval are to be scheduled and made prior

to the acquisition of the material or equipment covered thereby. Pick up and dispose of any samples remaining upon completion of work in accordance with manufacturer's Material Safety Data Sheets (MSDS) and in compliance with existing laws and regulations.

1.1 DEFINITIONS

1.1.1 Submittal Descriptions (SD)

Submittals requirements are specified in the technical sections. Submittals are identified by Submittal Description (SD) numbers and titles as follows:

SD-01 Preconstruction Submittals

Submittals which are required prior to commencement of construction activities.

Work plan

Quality control (QC) plan, unless included as an administrative submittal.

Permits

Project Schedule

SD-02 Shop Drawings

Drawings, diagrams and schedules specifically prepared to illustrate some portion of the work.

Diagrams and instructions from a manufacturer or fabricator for use in producing the product and as aids to the Contractor for integrating the product or system into the project.

Drawings prepared by or for the Contractor to show how multiple systems and interdisciplinary work will be coordinated.

SD-03 Product Data

Catalog cuts, illustrations, schedules, diagrams, performance charts, instructions and brochures illustrating size, physical appearance and other characteristics of materials, systems or equipment for some portion of the work.

Samples of warranty language when the contract requires extended product warranties.

SD-04 Samples

Fabricated or unfabricated physical examples of materials, equipment or workmanship that illustrate functional and aesthetic characteristics of a material or product and establish standards by which the work can be judged.

Color samples from the manufacturer's standard line (or custom color samples if specified) to be used in selecting or approving colors for the project.

Field samples and mock-ups constructed on the project site establish standards by which the ensuring work can be judged. Includes

assemblies or portions of assemblies which are to be incorporated into the project and those which will be removed at conclusion of the work.

SD-05 Design Data

Design calculations, mix designs, analyses or other data pertaining to a part of work.

SD-06 Test Reports

Report signed by authorized official of testing laboratory that a material, product or system identical to the material, product or system to be provided has been tested in accord with specified requirements. (Testing must have been within three years of date of contract award for the project.)

Report which includes findings of a test required to be performed by the Contractor on an actual portion of the work or prototype prepared for the project before shipment to job site.

Report which includes finding of a test made at the job site or on sample taken from the job site, on portion of work during or after installation.

Investigation reports.

Daily logs and checklists.

Final acceptance test and operational test procedure.

SD-07 Certificates

Statements printed on the manufacturer's letterhead and signed by responsible officials of manufacturer of product, system or material attesting that product, system or material meets specification requirements. Must be dated after award of project contract and clearly name the project.

Document required of Contractor, or of a manufacturer, supplier, installer or subcontractor through Contractor, the purpose of which is to further quality of orderly progression of a portion of the work by documenting procedures, acceptability of methods or personnel qualifications.

Confined space entry permits.

Text of posted operating instructions.

SD-08 Manufacturer's Instructions

Preprinted material describing installation of a product, system or material, including special notices and Material Safety Data sheets concerning impedances, hazards and safety precautions.

SD-09 Manufacturer's Field Reports

Documentation of the testing and verification actions taken by manufacturer's representative at the job site, in the vicinity of the job site, or on a sample taken from the job site, on a portion of the

work, during or after installation, to confirm compliance with manufacturer's standards or instructions. The documentation must be signed by an authorized official of a testing laboratory or agency and must state the test results; and indicate whether the material, product, or system has passed or failed the test.

Factory test reports.

SD-10 Operation and Maintenance Data

Data that is furnished by the manufacturer, or the system provider, to the equipment operating and maintenance personnel, including manufacturer's help and product line documentation necessary to maintain and install equipment. This data is needed by operating and maintenance personnel for the safe and efficient operation, maintenance and repair of the item.

This data is intended to be incorporated in an operations and maintenance manual or control system.

SD-11 Closeout Submittals

Documentation to record compliance with technical or administrative requirements or to establish an administrative mechanism.

Special requirements necessary to properly close out a construction contract. For example, Record Drawings and as-built drawings. Also, submittal requirements necessary to properly close out a major phase of construction on a multi-phase contract.

In addition, the following items are included:

As-built drawings

Special warranties

Posted operating instructions

Training plan

1.1.2 Approving Authority

Office or designated person authorized to approve submittal.

1.1.3 Work

As used in this section, on- and off-site construction required by contract documents, including labor necessary to produce submittals, construction, materials, products, equipment, and systems incorporated or to be incorporated in such construction.

1.1.4 Administrative Submittals

The submittal items listed below are not to be included on the Submittal Register (as discussed below). Unless directed otherwise by the Contracting Officer, the following administrative submittals shall be submitted to the Area or Resident (as directed) Office, for acceptance, via a Serial Letter: Quality Control Plans (Section 01 45 01 USACE QUALITY CONTROL, Accident Prevention Plans (Section 01 35 26 GOVERNMENTAL SAFETY

STANDARDS, Revisions to Environmental Protection Plans (Section 01 57 20.00 10 ENVIRONMENTAL PROTECTION) and other submittals as directed by the Contracting Officer. Format for the Serial Letter shall be as directed by the Area or Resident Office. The Contractor shall submit three (3) copies of administrative submittal items, unless directed otherwise.

1.2 SUBMITTAL CLASSIFICATION

Submittals are classified as follows:

Unless directed otherwise, the words "Government Approval" associated with "G"-designated submittals are interpreted in the context of the below defined submittal types. Submittal Reviewers include the following:

DO - District Office
AE - Architect Engineer
DR - Designer of Record
AO - Area Office or other designated Government Office
RO - Resident Office

1.2.1 Designer of Record Approved

Designer of Record approval is required for extensions of design, critical materials, any deviations from the solicitation, the accepted proposal, or the completed design, equipment whose compatibility with the entire system must be checked, and other items as designated by the Contracting Officer. Within the terms of the Contract Clause entitled "Specifications and Drawings for Construction," they are considered to be "shop drawings." Contractor to provide the Government with the number of copies designated hereinafter of all Designer of Record approved submittals. The Government may review any or all Designer of Record approved submittals for conformance to the Solicitation and Accepted Proposal. The Government will review all submittals designated as deviating from the Solicitation or Accepted Proposal, as described below. Design submittals to be in accordance Task Order requirements. Generally, design submittals should be identified as SD-05 Design Data submittals.

1.2.2 Government Reviewed Design During Construction Submittals

These submittals are those that involve 1) extensions of design for design work performed by the Construction Contractor not previously included in the completed design Construction drawings and require a conformance review by the Government, and 2) "Revisions to the Accepted Design" and require acceptance by the Government in accordance with the below paragraph titled "Supplemental Design Submittals".

These submittals must be reviewed and approved by the Contractor's Designer of the responsible design organization and Contractor's QC System Manager, prior to submittal to the Government for conformance review. Conformance review only checks for compliance with the RFP solicitation requirements. Conformance review of these submittals or lack thereof by the Government does not relieve the Contractor of its responsibility for the design and construction. Government review will not include development of design calculations or other means of determining adequacy of design. The Contractor and his designer retains the sole responsibility for adequacy of design.

The submittals below require a conformance review by the Government's District Office or Architect-Engineer, unless previously included in

completed design.

1. Fire Suppression Systems defined in sections 21 13 13.00 10 WET-PIPE SPRINKLER SYSTEM, FIRE PROTECTION, 21 13 17.00 10 DRY-PIPE SPRINKLER SYSTEM, FIRE PROTECTION, and other sections related to fire suppression that are required by the contract.

SD-02 Shop Drawings:

Shop Drawings

SD-03 Product Data:

Fire Protection Related Submittals

Sway Bracing

Materials and Equipment

Hydraulic Calculations

Spare Parts

Fire Protection Specialist

2. Fire Detection Systems defined in sections 28 31 00.00 10 FIRE DETECTION AND ALARM SYSTEM, DIRECT CURRENT LOOP, 28 31 64.00 10 FIRE DETECTION AND ALARM SYSTEM, ADDRESSABLE, and other sections related to fire detection that are required by the contract.

SD-02 Shop Drawings:

Fire Alarm Reporting System

SD-03 Product Data:

Storage Batteries

Voltage Drop

Special Tools and Spare Parts

Technical Data and Computer Software

3. HVAC Controls defined in section 23 09 23 DIRECT DIGITAL CONTROL FOR HVAC AND OTHER LOCAL BUILDING SYSTEMS and other sections related to HVAC controls that are required by the contract.

SD-02 Shop Drawings:

Contractor Design Drawings

SD-03 Product Data:

Service Organizations

Manufacturer's Catalog Data

1.2.3 Government Reviewed Construction Submittals

These submittals are those that need to be reviewed for conformance to the contract by either the Area or Resident Office (as directed) and other items as designated by the Contracting Officer's Representative. These submittals are to be reviewed and approved by the Contractor's Quality Control Representative and the Contractor's Designer prior to submittal to the Government. Conformance review only checks for compliance with the RFP solicitation requirements. Conformance review of submittals or lack thereof by the Government does not relieve the Contractor of its responsibility for the design and construction. Typical submittals are listed below.

- All Testing, Adjusting, and Balancing (TAB) submittals
- All System type testing procedures and acceptance reports (e.g., Fire Detection, Fire Protection, Security/Communication Systems, etc.)
- All O&M Manuals
- Other final operational type submittals such as Spare Parts Data, Framed Instructions, Warranty Information, etc.

- Training plans and schedules for Systems Training

1.2.4 Supplemental Design Submittals

If revisions to the accepted design (Construction Set) become necessary, the Contractor must submit a supplemental design package and the revisions will be considered a "Variation". The Contractor shall submit this Supplemental Design Package as a construction submittal in accordance with the below paragraph titled "Variations".

1.2.5 Government Approved

Government approval is required for any deviations from the Solicitation or Accepted Proposal and other items as designated by the Contracting Officer. Within the terms of the Contract Clause entitled "Specifications and Drawings for Construction," they are considered to be "shop drawings."

1.2.6 Information Only (FIO)

For Design-build construction all submittals not requiring Designer of Record or Government approval will be for information only. All "FIO" submittals are to be reviewed and approved by the Contractor's Quality Control Representative and the Contractor's Designer prior to submittal to the Government. The Contracting Officer has the option to review any submittal but these submittals do not require conformance review by the Government. Listed below are typical examples of FIO submittals. This list is not all inclusive of all FIO submittals.

1. Structural steel
2. Lawn irrigation systems
3. Concrete reinforcement
4. Millwork/casework
5. Masonry reinforcement
6. Interior signage
7. Cathodic protection
8. Asbestos abatement layouts
9. Security systems
10. Interior / Exterior Finishes
11. Furniture Systems
12. Pavement Concrete mix designs (special use - non routine, e.g., Airfield Paving)
13. Asphalt mix designs (special use - non routine, e.g., Airfield Paving)
14. Finish samples for major finishes

They are not considered to be "shop drawings" within the terms of the Contract Clause referred to above.

1.3 PREPARATION

1.3.1 Transmittal Form

Use transmittal form (ENG Form 4025) for submitting all submittals in accordance with the instructions on the reverse side of the form. This form will be furnished to the Contractor. Properly complete this form by filling out all the heading blank spaces and identifying each item submitted. Exercise special care to ensure proper listing of the specification paragraph and sheet number of the contract drawings pertinent to the data submitted for each item.

1.4 INFORMATION ONLY SUBMITTALS

Normally submittals for information only will not be returned. Approval of the Contracting Officer is not required on information only submittals. The Government reserves the right to require the Contractor to resubmit any item found not to comply with the contract. This does not relieve the Contractor from the obligation to furnish material conforming to the plans and specifications; will not prevent the Contracting Officer from requiring removal and replacement of nonconforming material incorporated in the work; and does not relieve the Contractor of the requirement to furnish samples for testing by the Government laboratory or for check testing by the Government in those instances where the technical specifications so prescribe. For design-build construction the Government will retain 2 copies of information only submittals.

1.5 VARIATIONS / SUBSTITUTION REQUESTS

Variations from contract requirements require Government approval pursuant to contract Clause FAR 52.236-21 and will be considered where advantageous to Government.

1.5.1 Considering Variations

Discussion with Contracting Officer prior to submission, will help ensure functional and quality requirements are met and minimize rejections and re-submittals. When contemplating a variation which results in lower cost, consider submission of the variation as a Value Engineering Change Proposal (VECP).

Specifically point out variations from contract requirements in transmittal letters. Failure to point out deviations may result in the Government requiring rejection and removal of such work at no additional cost to the Government.

1.5.2 Proposing Variations

When proposing variation, deliver written request to the Contracting Officer, with documentation of the nature and features of the variation and why the variation is desirable and beneficial to Government. If lower cost is a benefit, also include an estimate of the cost savings. In addition to documentation required for variation, include the submittals required for the item. Clearly mark the proposed variation in all documentation. Check the column "variation" of ENG Form 4025 for submittals which include proposed deviations requested by the Contractor. Set forth in writing the reason for any deviations and annotate such deviations on the submittal. The Government reserves the right to rescind inadvertent approval of submittals containing unnoted deviations.

If revisions to the accepted design (Construction Set) become necessary, submit a supplemental design package using the "Supplemental Design Certification and Transmittal Form". The revisions will be considered a "Variation" and the list of deviations from the accepted design shall be outlined on the Design Certification form. Variations from the Construction Set must be approved by the Contractor's Designer, and Contractor's Quality Control Representative and accepted by the Contracting Officer. The supplemental design submittal must include drawings, specifications, design analysis and calculations necessary to establish that the proposed revision satisfies the contract requirements.

1.5.3 Warranting That Variations Are Compatible

When delivering a variation for approval, Contractor warrants that this contract has been reviewed to establish that the variation, if incorporated, will be compatible with other elements of work.

1.5.4 Review Schedule Is Modified

In addition to normal submittal review period, a period of 10 working days will be allowed for consideration by the Government of submittals with variations.

1.6 SUBMITTAL REGISTER

The Designer of Record shall develop a complete list of submittals during design and identify required submittals in the specifications, and use the list to prepare the Submittal Register. The list may not be all inclusive and additional submittals may be required by other parts of the contract. The Contractor is required to complete the submittal register and submit it to the Contracting Officer for approval within 30 calendar days after Notice to Proceed. The approved submittal register will serve as a scheduling document for submittals and will be used to control submittal actions throughout the contract period. Coordinate the submit dates and need dates with dates in the Contractor prepared progress schedule. Submit monthly or until all submittals have been satisfactorily completed, updates to the submittal register showing the Contractor action codes and actual dates with Government action codes. Revise the submittal register when the progress schedule is revised and submit both for approval.

1.6.1 Use of Submittal Register

Submit submittal register. Submit with QC plan and project schedule. Verify that all submittals required for project are listed and add missing submittals. Coordinate and complete the following fields on the register submitted with the QC plan and the project schedule:

Column (a) Activity Number: Activity number from the project schedule.

Column (g) Contractor Submit Date: Scheduled date for approving authority to receive submittals.

Column (h) Contractor Approval Date: Date Contractor needs approval of submittal.

Column (i) Contractor Material: Date that Contractor needs material delivered to Contractor control.

1.6.2 Contractor Use of Submittal Register

Update the following fields with each submittal throughout contract.

Column (b) Transmittal Number: Contractor assigned list of consecutive numbers.

Column (j) Action Code (k): Date of action used to record Contractor's review when forwarding submittals to QC.

Column (l) List date of submittal transmission.

Column (q) List date approval received.

1.6.3 Approving Authority Use of Submittal Register

Update the following fields.

Column (b) Transmittal Number: Contractor assigned list of consecutive numbers.

Column (l) List date of submittal receipt.

Column (m) through (p) List Date related to review actions.

Column (q) List date returned to Contractor.

1.6.4 Contractor Action Code and Action Code

Entries for columns (j) and (o), are to be used are as follows (others may be prescribed by Transmittal Form):

NR - Not Received

AN - Approved as noted

A - Approved

RR - Disapproved, Revise, and Resubmit

1.6.5 Copies Delivered to the Government

Deliver one copy of submittal register updated by Contractor to Government with each invoice request.

1.7 SUBMITTAL ITEM PROCEDURES

1.7.1 Government Reviewed Design Construction Submittals

The Contractor is encouraged to utilize web-based portal to upload all required drawings and submittals for each task order. It will be accessible by the Government and installations to conduct review and subsequent approval/disapproval of all items submitted. Omaha District POL-DX will be the approving authority for items pertaining to each task order.

1.7.2 Government Reviewed Construction, Government Approved (G-AO/G-RO) and FIO Submittals

Except as noted below, data for all Government Reviewed Construction and Government Approved submittal items are to be submitted in five (5) copies to the Area or Resident Engineer (as directed). All five copies are to be submitted using the transmittal form. Items not to be submitted in multiples, such as samples and test cylinders, are to be submitted to the Area or Resident Engineer (as directed) accompanied by five (5) copies of the transmittal form.

Except as noted below, data for all items listed as "FIO" Submittals in the various sections are to be submitted in five (5) copies. All five (5) copies are to be submitted to the Area or Resident Engineer (as directed) using the transmittal form. Items not to be submitted in multiples, such as samples and test cylinders, are to be submitted to the Area or Resident Engineer (as directed) accompanied by five (5) copies of the transmittal form.

All submittals must be reviewed and approved by the Contractor's Quality Control Representative and Contractor's Designer prior to submittal to the Government. A completed Government conformance review is required on all Government Reviewed Construction submittals, prior to construction of the related items.

The Government has the option to review any For Information Only submittals.

1.7.3 Certificates of Compliance

Each certificate must be signed by an official authorized to certify in behalf of the manufacturing company and contain the name and address of the Contractor, the project name and location, and the quantity and date or dates of shipment or delivery to which the certificates apply. Copies of laboratory test reports submitted with certificates must contain the name and address of the testing laboratory and the date or dates of the tests to which the report applies. Certification is not to be construed as relieving the Contractor from furnishing satisfactory material, if, after tests are performed on selected samples, the material is found not to meet the specific requirements.

1.7.4 Purchase Orders

Copies of purchase orders are to be furnished to the Contracting Officer when the Contractor requests assistance for expediting deliveries of equipment or materials, or when requested by the Contracting Officer for the purpose of quality assurance review. Each purchase order issued by the Contractor or his subcontractors for materials and equipment to be incorporated into the project are to (1) be clearly identified with the applicable DA contract number, (2) carry an identifying number, (3) be in sufficient detail to identify the material being purchased, (4) indicate a definite delivery date, and (5) display the DMS priority rating, if applicable.

1.7.5 Operation and Maintenance Data/Manuals

Where required by various technical sections, operations and maintenance data/manuals are to be provided by the Contractor in two (2) hard copies and three (3) separate electronic copies (on CD-ROM), unless directed otherwise. Provide legible hard copies of the operations and maintenance data that are assembled in three-ring binders with index and tabbed section dividers and having a cover indicating the contents by equipment or system name and and include the project title and location. The legible electronic copies of the operation and maintenance data on the CD-ROMs are to be in a Adobe Acrobat .PDF format (Version 8.0) and be organized using bookmarks that define the contents by equipment or system name and includes Project Name and Location, unless directed otherwise by the Contracting Officer. Include the same information on the CD-ROM cover. Operation and maintenance data for mechanical and electrical systems are to be submitted for approval to the Contracting Officer 90 days prior to final tests of these systems, unless otherwise specified. Each operation and maintenance

manual must contain a copy of all warranties and a list of local service representatives required by Section 01 78 36.00 24 WARRANTY OF CONSTRUCTION AND DESIGN. If field testing requires these copies to be revised, they are to be updated and resubmitted for approval within 10 calendar days after completion of tests. The Operations and Maintenance Data are to be shown as a separate activity on the Contractor prepared construction schedule bar chart or network analysis system. In addition, all wiring and control diagrams and approved system layout drawings must be submitted and included with the O&M Data.

1.7.6 Interior/Exterior Finish Sample and Data

If applicable to Task Order, all submittals regarding color boards (Section 09 06 90 COLOR SCHEDULE, If applicable) for interior finish samples and data are to be submitted concurrently and all submittals for exterior finish samples and data are to be submitted concurrently. These color boards are in addition to the samples required under the specific technical specifications listed as "samples".

1.8 SCHEDULING

Schedule and submit concurrently submittals covering component items forming a system or items that are interrelated. Allow a minimum of 20 calendar days exclusive of mailing for any Government reviews and approvals, unless directed otherwise. Include certifications to be submitted with the pertinent drawings at the same time. No delay damages or time extensions will be allowed for time lost in late submittals. .

- a. Coordinate scheduling, sequencing, preparing and processing of submittals with performance of work so that work will not be delayed by submittal processing. Allow for potential resubmittal of requirements.
- b. Submittals called for by the contract documents will be listed on the register. If a submittal is called for but does not pertain to the contract work, the Contractor is to include the submittal in the register and annotate it "N/A" with a brief explanation. Approval by the Contracting Officer does not relieve the Contractor of supplying submittals required by the contract documents but which have been omitted from the register or marked "N/A".
- c. Re-submit register and annotate monthly by the Contractor with actual submission and approval dates. When all items on the register have been fully approved, no further re-submittal is required.
- d. Carefully control procurement operations to ensure that each individual submittal is made on or before the Contractor scheduled submittal date shown on the approved "Submittal Register."

1.8.1 Government Reviewed Design or Extension of Design

The Government will review all design submittals for conformance with the technical requirements of the Task Order. Government review is required for extension of design construction submittals, used to define contract conformity, and for deviation from the completed design. Review will be only for conformance with the contract requirements. Included are only those construction submittals for which the Designer of Record design

documents do not include enough detail to ascertain contract compliance. The Government may, but is not required, to review extensions of design such as structural steel or reinforcement shop drawings.

1.9 GOVERNMENT APPROVING AUTHORITY

When approving authority is Contracting Officer, the Government will:

- a. Note date on which submittal was received.
- b. Review submittals for approval within scheduling period specified and only for conformance with project design concepts and compliance with contract documents.
- c. Identify returned submittals with one of the actions defined in paragraph entitled "Review Notations" and with markings appropriate for action indicated.

Upon completion of review of submittals requiring Government approval, stamp and date approved submittals. All copies of the approved submittal will be retained by the Contracting Officer, except for two (2) copies of the submittal which will be returned to the Contractor. If the Government performs a conformance review of other Designer of Record approved submittals, the submittals will be so identified and returned, as described above.

1.10 DISAPPROVED OR REJECTED SUBMITTALS

Contractor shall make corrections required by the Contracting Officer. If the Contractor considers any correction or notation on the returned submittals to constitute a change to the contract drawings or specifications; notice as required under the clause entitled, "Changes" is to be given to the Contracting Officer. Contractor is responsible for the dimensions and design of connection details and construction of work. Failure to point out deviations may result in the Government requiring rejection and removal of such work at the Contractor's expense.

If changes are necessary to submittals, the Contractor shall make such revisions and submission of the submittals in accordance with the procedures above. No item of work requiring a submittal change is to be accomplished until the changed submittals are approved.

1.11 APPROVED/ACCEPTED SUBMITTALS

The Contracting Officer's approval or acceptance of submittals is not be construed as a complete check, and indicates only that design, general method of construction, materials, detailing and other information appear to meet the Solicitation and Accepted Proposal. Approval or acceptance will not relieve the Contractor of the responsibility for any error which may exist, as the Contractor under the Contractor Quality Control (CQC) requirements of this contract is responsible for design, dimensions, all design extensions, such as the design of adequate connections and details, etc., and the satisfactory construction of all work. After submittals have been approved or accepted by the Contracting Officer, no resubmittal for the purpose of substituting materials or equipment will be considered unless accompanied by an explanation of why a substitution is necessary.

1.12 APPROVED SAMPLES

Approval of a sample is only for the characteristics or use named in such approval and is not be construed to change or modify any contract requirements. Before submitting samples, the Contractor to assure that the materials or equipment will be available in quantities required in the project. No change or substitution will be permitted after a sample has been approved.

Match the approved samples for Materials and equipment incorporated in the work. If requested, approved samples, including those which may be damaged in testing, will be returned to the Contractor, at his expense, upon completion of the contract. Samples not approved will also be returned to the Contractor at its expense, if so requested.

Failure of any materials to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material. Government reserves the right to disapproved any material or equipment which previously has proved unsatisfactory in service.

Samples of various materials or equipment delivered on the site or in place may be taken by the Contracting Officer for testing. Samples failing to meet contract requirements will automatically void previous approvals. Contractor to replace such materials or equipment to meet contract requirements.

Approval of the Contractor's samples by the Contracting Officer does not relieve the Contractor of his responsibilities under the contract.

1.13 WITHHOLDING OF PAYMENT

No payment for materials incorporated in the work will be made if all required Designer of Record or required Government approvals have not been obtained. No payment will be made for any materials incorporated into the work for any conformance review submittals or information only submittals found to contain errors or deviations from the Solicitation or Accepted Proposal.

1.14 STAMPS

Stamps used by the Contractor on the submittal data to certify that the submittal meets contract requirements.

For design-build construction, both the Contractor Quality Control System Manager and the Designer of Record are to stamp and sign to certify that the submittal meets contract requirements.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

Not Used

-- End of Section --

This page was intentionally left blank for duplex printing.

CONTRACT NO.

CONTRACTOR

[illegible][illegible]

This page was intentionally left blank for duplex printing.

TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES, OR MANUFACTURER'S CERTIFICATES OF COMPLIANCE <i>(Read instructions on the reverse side prior to initiating this form)</i>	DATE	TRANSMITTAL NO.
---	------	-----------------

SECTION I - REQUEST FOR APPROVAL OF THE FOLLOWING ITEMS *(This section will be initiated by the contractor)*

TO:	FROM:	CONTRACT NO.	CHECK ONE: ☐ THIS IS A NEW TRANSMITTAL ☐ THIS IS A RESUBMITTAL OF TRANSMITTAL _____
SPECIFICATION SEC. NO. <i>(Cover only one section with each transmittal)</i>	PROJECT TITLE AND LOCATION		CHECK ONE: THIS TRANSMITTAL IS FOR ☐ FIO ☐ GOV'T. APPROVAL

ITEM NO.	DESCRIPTION OF ITEM SUBMITTED <i>(Type size, model number/etc.)</i> (With Country of Origin)	MFG OR CONTR. CAT., CURVE DRAWING OR BROCHURE NO. <i>(See instruction no. 8)</i>	NO. OF COPIES	CONTRACT REFERENCE DOCUMENT		FOR CONTRACTOR USE CODE	VARIATION <i>(See instruction No. 6)</i>	FOR CE USE CODE
				SPEC. PARA. NO.	DRAWING SHEET NO.			
a.	b.	c.	d.	e.	f.	g.	h.	i.
							☐	
							☐	
							☐	
							☐	
							☐	
							☐	
							☐	
							☐	
							☐	
							☐	
							☐	
							☐	

REMARKS	I certify that the above submitted items have been reviewed in detail and are correct and in strict conformance with the contract drawings and specifications except as other wise stated. _____ NAME AND SIGNATURE OF CONTRACTOR
---------	---

SECTION II - APPROVAL ACTION

ENCLOSURES RETURNED <i>(List by Item No.)</i>	NAME, TITLE AND SIGNATURE OF APPROVING AUTHORITY	DATE
---	--	------

INSTRUCTIONS

1. Section I will be initiated by the Contractor in the required number of copies.
2. Each transmittal shall be numbered consecutively in the space provided for "Transmittal No.". This number, in addition to the contract number, will form a serial number for identifying each submittal. For new submittals or resubmittals mark the appropriate box; on resubmittals, insert transmittal number of last submission as well as the new submittal number.
3. The "Item No." will be the same "Item No." as indicated on ENG FORM 4288-R for each entry on this form.
4. Submittals requiring expeditious handling will be submitted on a separate form.
5. Separate transmittal form will be used for submittals under separate sections of the specifications.
6. A check shall be placed in the "Variation" column when a submittal is not in accordance with the plans and specifications--also, a written statement to that effect shall be included in the space provided for "Remarks".
7. Form is self-transmittal, letter of transmittal is not required.
8. When a sample of material or Manufacturer's Certificate of Compliance is transmitted, indicate "Sample" or "Certificate" in column c, Section I.
9. U.S. Army Corps of Engineers approving authority will assign action codes as indicated below in space provided in Section I, column i to each item submitted. In addition they will ensure enclosures are indicated and attached to the form prior to return to the contractor. The Contractor will assign action codes as indicated below in Section I, column g, to each item submitted.

THE FOLLOWING ACTION CODES ARE GIVEN TO ITEMS SUBMITTED

- | | |
|---|---|
| A -- Approved as submitted. | E -- Disapproved (See attached). |
| B -- Approved, except as noted on drawings. | F -- Receipt acknowledged. |
| C -- Approved, except as noted on drawings.
Refer to attached sheet resubmission required. | FX -- Receipt acknowledged, does not comply
as noted with contract requirements. |
| D -- Will be returned by separate correspondence. | G -- Other (<i>Specify</i>) |

10. Approval of items does not relieve the contractor from complying with all the requirements of the contract plans and specifications.

SECTION TABLE OF CONTENTS

DIVISION 01 - GENERAL REQUIREMENTS

SECTION 01 35 26

GOVERNMENTAL SAFETY REQUIREMENTS

08/09; OMH 10/09

PART 1 GENERAL

- 1.1 REFERENCES
- 1.2 SUBMITTALS
- 1.3 DEFINITIONS
- 1.4 REGULATORY REQUIREMENTS
- 1.5 SITE QUALIFICATIONS, DUTIES AND MEETINGS
 - 1.5.1 Personnel Qualifications
 - 1.5.1.1 Site Safety and Health Officer (SSHO)
 - 1.5.1.2 Certified Industrial Hygienist
 - 1.5.1.3 Other Safety Personnel
 - 1.5.1.4 Crane Operators
 - 1.5.2 Personnel Duties
 - 1.5.2.1 Site Safety and Health Officer (SSHO)
 - 1.5.2.2 Other Safety Personnel
 - 1.5.3 Meetings
 - 1.5.3.1 Pre-Work Safety Meeting (Safety Preconstruction Conference)
- 1.6 ACCIDENT PREVENTION PLAN (APP)
 - 1.6.1 EM 385-1-1 Contents
- 1.7 ACTIVITY HAZARD ANALYSIS (AHA)
- 1.8 DISPLAY OF SAFETY INFORMATION
- 1.9 SITE SAFETY REFERENCE MATERIALS
- 1.10 EMERGENCY MEDICAL TREATMENT
- 1.11 REPORTS
 - 1.11.1 Accident Reports
 - 1.11.2 Accident Notification
 - 1.11.3 Crane Reports
- 1.12 HOT WORK
- 1.13 FACILITY OCCUPANCY CLOSURE
- 1.14 SEVERE STORM PLAN
- 1.15 CONFINED SPACE ENTRY REQUIREMENTS.

PART 2 PRODUCTS

PART 3 EXECUTION

- 3.1 CONSTRUCTION AND/OR OTHER WORK
 - 3.1.1 Hazardous Material Exclusions
 - 3.1.2 Unforeseen Hazardous Material
- 3.2 PRE-OUTAGE COORDINATION MEETING
- 3.3 CONTROL OF HAZARDOUS ENERGY (LOCKOUT/TAGOUT)
 - 3.3.1 Tag Placement
 - 3.3.2 Tag Removal
- 3.4 FALL HAZARD PROTECTION AND PREVENTION PROGRAM
 - 3.4.1 Training

- 3.4.2 Fall Protection Equipment and Systems
 - 3.4.2.1 Personal Fall Arrest Equipment
- 3.4.3 Fall Protection for Roofing Work
- 3.4.4 Existing Anchorage
- 3.4.5 Horizontal Lifelines
- 3.4.6 Guardrails and Safety Nets
- 3.4.7 Rescue and Evacuation Procedures
- 3.5 EQUIPMENT
 - 3.5.1 Material Handling Equipment
- 3.6 EXCAVATIONS
 - 3.6.1 Utility Locations
 - 3.6.2 Utility Location Verification
 - 3.6.3 Shoring Systems
 - 3.6.4 Trenching Machinery
- 3.7 UTILITIES WITHIN CONCRETE SLABS
- 3.8 ELECTRICAL
 - 3.8.1 Conduct of Electrical Work
 - 3.8.2 Portable Extension Cords
- 3.9 WORK IN CONFINED SPACES
- 3.10 AIRFIELD SAFETY PRECAUTIONS (DEC 1991)
 - 3.10.1 Definitions
 - 3.10.2 General
 - 3.10.3 The Contractor shall
 - 3.10.4 Landing Areas
 - 3.10.5 Safety Precaution Areas

-- End of Section Table of Contents --

SECTION 01 35 26

GOVERNMENTAL SAFETY REQUIREMENTS
08/09; OMH 10/09

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

AMERICAN SOCIETY OF SAFETY ENGINEERS (ASSE/SAFE)

- | | |
|------------------|--|
| ASSE/SAFE A10.32 | (2004) Fall Protection |
| ASSE/SAFE A10.34 | (2001; R 2005) Protection of the Public on or Adjacent to Construction Sites |
| ASSE/SAFE Z359.1 | (2007) Safety Requirements for Personal Fall Arrest Systems, Subsystems and Components |

http://www.wbdg.org/ccb/browse_org.php?o=33

NATIONAL FIRE PROTECTION ASSOCIATION (NFPA)

- | | |
|----------|---|
| NFPA 51B | (2009) Standard for Fire Prevention During Welding, Cutting, and Other Hot Work |
| NFPA 70 | (2008; AMD 1 2008) National Electrical Code - 2008 Edition |
| NFPA 70E | (2009; Errata 2009) Standard for Electrical Safety in the Workplace |

U.S. ARMY CORPS OF ENGINEERS (USACE)

- | | |
|------------|--|
| EM 385-1-1 | (2008) Safety and Health Requirements Manual |
|------------|--|

<http://usace.army.mil/CESO/Pages/Home.aspx>

U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

- | | |
|------------------|--|
| 29 CFR 1910.1000 | Air Contaminants |
| 29 CFR 1910.146 | Permit-required Confined Spaces |
| 29 CFR 1926 | Safety and Health Regulations for Construction |
| 29 CFR 1926.500 | Fall Protection |

1.2 SUBMITTALS

Government acceptance is required for the administrative submittals identified below. The following shall be submitted in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

Administrative Submittals

Accident Prevention Plan (APP)

Activity Hazard Analysis (AHA)

Crane Critical Lift Plan (If applicable):

Scaffolding Plan

Proof of qualification for Crane Operators (If applicable)

Test Reports:

Reports:

Submit reports as their incidence occurs, in accordance with the requirements of the paragraph entitled, "Reports."

Accident Reports

Monthly Exposure Reports

Crane Reports (If applicable)

Certificates:

Confined Space Entry Permit

Hot work permit

License Certificates

Submit one copy of each permit/certificate attached to each Daily Quality Control Report.

1.3 DEFINITIONS

The following definitions supplement the definitions included in USACE EM 385-1-1 Appendix Q:

- a. High Visibility Accident. Any mishap which may generate publicity and/or high visibility.
- b. Medical Treatment. Treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even through provided by a physician or registered personnel.
- c. Recordable Injuries or Illnesses. Any work-related injury or illness that results in:

- (1) Death, regardless of the time between the injury and death, or the length of the illness;
 - (2) Days away from work (any time lost after day of injury/illness onset);
 - (3) Restricted work;
 - (4) Transfer to another job;
 - (5) Medical treatment beyond first aid;
 - (6) Loss of consciousness; or
 - (7) A significant injury or illness diagnosed by a physician or other licensed health care professional, even if it did not result in (1) through (6) above.
- d. "USACE" property and equipment specified in USACE EM 385-1-1 should be interpreted as Government property and equipment.

1.4 REGULATORY REQUIREMENTS

The requirements of this specification supplement U.S. Army Corps of Engineers(USACE) Safety and Health Requirements Manual, EM 385-1-1, and the applicable federal, state, and local laws, ordinances, criteria, rules and regulations. Where the requirements of this specification, applicable laws, criteria, ordinances, regulations, and referenced documents vary, the most stringent requirements govern.

1.5 SITE QUALIFICATIONS, DUTIES AND MEETINGS

1.5.1 Personnel Qualifications

1.5.1.1 Site Safety and Health Officer (SSHO)

The contractor shall provide a Safety oversight team that includes a minimum of one (1) Competent Person at each project site to function as the Safety and Health Officer (SSHO). The SSHO shall be at the work site at all times, unless specified differently in the contract, to perform safety and occupational health management, surveillance, inspections, and safety enforcement for the Contractor, and their training, experience, and qualifications shall be as required by EM 385-1-1 paragraph 01.A.17 and all associated sub-paragraphs. A Competent Person shall be provided for all of the hazards identified in the Contractor's Safety and Health Program in accordance with the accepted Accident Prevention Plan, and shall be on-site at all times when the work that presents the hazards associated with their professional expertise is being performed. The credentials of the Competent Persons(s) shall be approved by the Contracting Officer in consultation with the Safety Office.

The Contractor Quality Control (QC) person may or may not be the SSHO on this project, per requirements of each Task Order, even though the QC has safety inspection responsibilities as part of the QC duties.

1.5.1.2 Certified Industrial Hygienist

The services of an Industrial Hygienist certified by the American Board of

Industrial Hygiene shall be utilized. The name, qualifications and work experience summary shall be included in the SSHP. The CIH shall be responsible for the development, implementation, oversight, and enforcement of the SSHP. Any modifications to the SSHP shall be at the direction and approval of the CIH and coordinated with appropriate contractor and governmental personnel.

1.5.1.3 Other Safety Personnel

Other safety personnel shall be as specified in other sections of the specifications.

1.5.1.4 Crane Operators

Meet the crane operators requirements in USACE EM 385-1-1, Section 16 and Appendix I. In addition, for mobile cranes with Original Equipment Manufacturer (OEM) rated capacities of 50,000 pounds or greater, designate crane operators as qualified by a source that qualifies crane operators (i.e., union, a government agency, or an organization that tests and qualifies crane operators). Provide proof of current qualification. For Hawaii Only, Also meet the crane operator requirements of the State of Hawaii for Crane certification.

1.5.2 Personnel Duties

1.5.2.1 Site Safety and Health Officer (SSHO)

- a. Conduct daily safety and health inspections and maintain a written log which includes area/operation inspected, date of inspection, identified hazards, recommended corrective actions, estimated and actual dates of corrections. Attach safety inspection logs to the Contractors' daily quality control report.
- b. Conduct mishap investigations and complete required reports. Maintain the OSHA Form 300 for prime and sub-contractors.
- c. Maintain applicable safety reference material on the job site.
- d. Attend the safety meeting, pre-construction conference, pre-work meetings including preparatory inspection meeting, and periodic in-progress meetings.
- e. Implement and enforce accepted APPS and AHAs.
- f. Maintain a safety and health deficiency tracking system that monitors outstanding deficiencies until resolution. Post a list of unresolved safety and health deficiencies on the safety bulletin board.
- g. Ensure sub-contractor compliance with safety and health requirements.

Failure to perform the above duties will result in dismissal of the superintendent, QC Manager, and/or SSHO, and a project work stoppage. The project work stoppage will remain in effect pending approval of a suitable replacement.

- h. Maintain a list of hazardous chemicals on site and their material safety data sheets.
- i. Report Accidents in accordance with the Accident Reporting and Record

Keeping requirements of EM 385-1-1.

1.5.2.2 Other Safety Personnel

Duties of other safety personnel shall be as specified in other sections of the specifications.

1.5.3 Meetings

1.5.3.1 Pre-Work Safety Meeting (Safety Preconstruction Conference)

- a. Contractor representatives who have a responsibility or significant role in accident prevention on the project shall attend the Safety Meeting. This includes the project superintendent, site safety and health officer, quality control supervisor, or any other assigned safety and health professionals who participated in the development of the APP (including the Activity Hazard Analyses (AHAs) and special plans, program and procedures associated with it).
- b. Discuss the details of the submitted APP to include incorporated plans, programs, procedures and a listing of anticipated AHAs that will be developed and implemented during the performance of the contract. This list of proposed AHAs will be reviewed at the Safety Meeting and an agreement will be reached between the Contractor and the Contracting Officer's representative as to which phases will require an analysis. In addition, establish a schedule for the preparation, submittal, review, and acceptance of AHAs to preclude project delays.
- c. Deficiencies in the submitted APP will be brought to the attention of the Contractor at the preconstruction conference, and the Contractor shall revise the plan to correct deficiencies and re-submit it for acceptance. Do not begin work until there is an accepted APP.
- d. The functions of a Safety Meeting may take place at the Post-Award Kickoff meeting for Design Build Contracts.

1.6 ACCIDENT PREVENTION PLAN (APP)

Use a qualified person to prepare the written site-specific APP. Prepare the APP in accordance with the format and requirements of USACE EM 385-1-1 and as supplemented herein. Cover all paragraph and subparagraph elements in USACE EM 385-1-1, Appendix A, "Minimum Basic Outline for Accident Prevention Plan". Specific requirements for some of the APP elements are described below. The APP shall be job-specific and address any unusual or unique aspects of the project or activity for which it is written. The APP shall interface with the Contractor's overall safety and health program. Include any portions of the Contractor's overall safety and health program referenced in the APP in the applicable APP element and made site-specific. The Government considers the Prime Contractor to be the "controlling authority" for all work site safety and health of the subcontractors. Contractors are responsible for informing their subcontractors of the safety provisions under the terms of the contract and the penalties for noncompliance, coordinating the work to prevent one craft from interfering with or creating hazardous working conditions for other crafts, and inspecting subcontractor operations to ensure that accident prevention responsibilities are being carried out. The APP shall be signed by the person and firm (senior person) preparing the APP, the Contractor, the on-site superintendent, the designated site safety and health officer, the Contractor Quality control Manager, and any designated CSP and/or CIH.

Submit the APP to the Contracting Officer 15 calendar days prior to the date of the Safety Meeting for acceptance. Work cannot proceed without an accepted APP.

Once accepted by the Contracting Officer, the APP and attachments will be enforced as part of the contract. Disregarding the provisions of this contract or the accepted APP will be cause for stopping of work, at the discretion of the Contracting Officer, until the matter has been rectified.

Once work begins, changes to the accepted APP shall be made with the knowledge and concurrence of the Contracting Officer, project superintendent, SSHO and quality control manager. Should any severe hazard exposure, i.e. imminent danger, become evident, stop work in the area, secure the area, and develop a plan to remove the exposure and control the hazard. Notify the Contracting Officer within 24 hours of discovery. Eliminate/remove the hazard. In the interim, take all necessary action to restore and maintain safe working conditions in order to safeguard onsite personnel, visitors, the public (as defined by ASSE/SAFE A10.34,) and the environment.

Copies of the accepted plan will be maintained at the job site. Continuously reviewed and amended the APP, as necessary, throughout the life of the contract. Incorporate unusual or high-hazard activities not identified in the original APP as they are discovered.

1.6.1 EM 385-1-1 Contents

In addition to the requirements outlined in Appendix A of USACE EM 385-1-1, the following is required:

- a. If applicable, Crane Critical Lift Plan. Prepare and sign weight handling critical lift plans for lifts over 75 percent of the capacity of the crane or hoist (or lifts over 50 percent of the capacity of a barge mounted mobile crane's hoists, if applicable) at any radius of lift; lifts involving more than one crane or hoist; lifts of personnel; and lifts involving non-routine rigging or operation, sensitive equipment, or unusual safety risks. Submit 15 calendar days prior to on-site work and include the requirements of USACE EM 385-1-1, paragraph 16.H. and the following:
 - (1) For lifts of personnel, demonstrate compliance with the requirements of 29 CFR 1926.550(g).
 - (2) For barge mounted mobile cranes, barge stability calculations identifying barge list and trim based on anticipated loading; and load charts based on calculated list and trim. The amount of list and trim shall be within the crane manufacturer's requirements.
- b. Occupant Protection Plan. If applicable, the safety and health aspects of lead-based paint removal, prepared in accordance with Section 02 82 16.00 20 LEAD BASED PAINT HAZARD ABATEMENT, TARGET HOUSING & CHILD OCCUPIED FACILITIES.
- c. Lead Compliance Plan. If applicable, the safety and health aspects of lead work, prepared in accordance with Section 02 83 13.00 20 LEAD IN CONSTRUCTION.
- d. Asbestos Hazard Abatement Plan. If applicable, the safety and health

aspects of asbestos work, prepared in accordance with Section
02 82 14.00 10 ASBESTOS HAZARD CONTROL ACTIVITIES.

- e. Site Safety and Health Plan. For each Task order issued, the Contractor shall prepare a written SSHP prior to beginning on-site work. As a minimum the SSHP shall contain the following elements:
 - a. Site description and contaminant characterization.
 - b. Safety and health hazard (s) assessment and risk analysis for each site task and operation.
 - c. Accident prevention per EM 385-1-1, "Safety and Health Requirements Manual. "
 - d. Safety and health staff organization and responsibilities.
 - e. Site-specific training.
 - f. Site-specific medical surveillance parameters.
 - g. Personal protective equipment (PPE) to be used and establishment of action levels for upgrades or downgrades of PPE.
 - h. Monitoring and sampling, including personal and perimeter air sampling, heat and cold stress, noise, and radiation monitoring.
 - i. Safety and health work precautions and procedures.
 - j. Site control measures.
 - k. Personnel and equipment decontamination facilities and procedures.
 - l. On-site first aid and emergency equipment.
 - m. At least two persons currently certified in standard First Aid and CPR by the American Red Cross or equivalent agency shall be present on site at all times during site operations.
 - n. On-site and off-site emergency response plan and contingency procedures.
 - o. Logs, reports, and record keeping.
- f. PCB Plan. As Applicable, the safety and health aspects of Polychlorinated Biphenyls work, prepared in accordance with Sections 02 84 33 REMOVAL AND DISPOSAL OF POLYCHLORINATED BIPHENALS and 02 61 23 REMOVAL AND DISPOSAL OF PCB CONTAMINATED SOILS.
- g. Site Demolition Plan. The safety and health aspects prepared in accordance with Section 02 41 00 DEMOLITION and referenced sources. Include engineering survey as applicable.
- h. Excavation Plan. The safety and health aspects prepared in accordance with Section 31 00 00 EARTHWORK.

1.7 ACTIVITY HAZARD ANALYSIS (AHA)

The Activity Hazard Analysis (AHA) format shall be in accordance with USACE EM 385-1-1, Section 1. Submit the AHA for review at least 15 calendar days prior to the start of each phase. Format subsequent AHAs as amendments to the APP. The analysis should be used during daily inspections to ensure the implementation and effectiveness of the activity's safety and health controls.

The AHA list will be reviewed periodically (at least monthly) at the Contractor supervisory safety meeting and updated as necessary when procedures, scheduling, or hazards change.

Develop the activity hazard analyses using the project schedule as the basis for the activities performed. Any work activities listed on the

project schedule will require an AHA. The AHAs will be developed by the contractor, supplier or subcontractor and provided to the prime contractor for submittal to the Contracting Officer.

1.8 DISPLAY OF SAFETY INFORMATION

Within 7 calendar days after commencement of work on each subsequent Task Order, erect a safety bulletin board at the job site. Where size, duration, or logistics of project do not facilitate a bulletin board, an alternative method, acceptable to the Contracting Officer, that is accessible and includes all mandatory information for employee and visitor review, shall be deemed as meeting the requirement for a bulletin board. Include and maintain information on safety bulletin board as required by EM 385-1-1, section 01.A.06. Additional items required to be posted include:

- a. Confined space entry permit.
- b. Hot work permit.

1.9 SITE SAFETY REFERENCE MATERIALS

Maintain safety-related references applicable to the Task Order, including those listed in the article "References." Maintain applicable equipment manufacturer's manuals.

1.10 EMERGENCY MEDICAL TREATMENT

Contractors will arrange for their own emergency medical treatment. Government has no responsibility to provide emergency medical treatment.

1.11 REPORTS

1.11.1 Accident Reports

- a. Conduct an accident investigation for recordable injuries and illnesses, as defined in 1.3.h and property damage accidents resulting in at least \$2,000 in damages, to establish the root cause(s) of the accident, complete the USACE Accident Report ENG Form 3394 and provide the report to the Contracting Officer within 5 calendar day(s) of the accident. The Contracting Officer will provide copies of any required or special forms.

1.11.2 Accident Notification

Notify the Contracting Officer as soon as practical, but not later than four hours, after any accident meeting the definition of Recordable Injuries or Illnesses or High Visibility Accidents, property damage equal to or greater than \$2,000, or any weight handling equipment accident. Within notification include contractor name; contract title; type of contract; name of activity, installation or location where accident occurred; date and time of accident; names of personnel injured; extent of property damage, if any; extent of injury, if known, and brief description of accident (to include type of construction equipment used, PPE used, etc.); and Points of Contact with Phone Numbers. Preserve the conditions and evidence on the accident site until the Government investigation team

arrives on-site and Government investigation is conducted.

1.11.3 Crane Reports

Submit crane inspection reports required in accordance with USACE EM 385-1-1, Appendix I, if required by the Task Order.

1.12 HOT WORK

The Contractor will provide at least two (2) twenty (20) pound 4A:20 BC rated extinguishers for normal "Hot Work". All extinguishers shall be current inspection tagged, approved safety pin and tamper resistant seal. It is also mandatory to have a designated FIRE WATCH for any "Hot Work" done at this activity. The Fire Watch shall be trained in accordance with NFPA 51B.

1.13 FACILITY OCCUPANCY CLOSURE

Streets, walks, and other facilities occupied and used by the Government shall not be closed or obstructed without written permission from the Contracting Officer.

1.14 SEVERE STORM PLAN

In the event of a severe storm warning, the Contractor must:

- a. Secure outside equipment and materials and place materials that could be damaged in protected areas.
- b. Check surrounding area, including roof, for loose material, equipment, debris, and other objects that could be blown away or against existing facilities.
- c. Ensure that temporary erosion controls are adequate.

1.15 CONFINED SPACE ENTRY REQUIREMENTS.

Contractors entering and working in confined spaces performing general industry work are required to follow the requirements of 29 CFR 1926.

PART 2 PRODUCTS

Not used.

PART 3 EXECUTION

3.1 CONSTRUCTION AND/OR OTHER WORK

3.1.1 Hazardous Material Exclusions

Notwithstanding any other hazardous material used in this contract, radioactive materials or instruments capable of producing ionizing/non-ionizing radiation (with the exception of radioactive material and devices used in accordance with USACE EM 385-1-1 such as nuclear density meters for compaction testing and laboratory equipment with radioactive sources) as well as materials which contain asbestos, mercury or polychlorinated biphenyls, di-isocyanates, lead-based paint are prohibited. The Contracting Officer, upon written request by the Contractor, may consider exceptions to the use of any of the above excluded

materials. The Radiation Safety Officer (RSO) must be notified prior to excepted items of radioactive material and devices being brought on base.

3.1.2 Unforeseen Hazardous Material

The design should have identified materials such as PCB, lead paint, and friable and non-friable asbestos and other OSHA regulated chemicals (i.e. 29 CFR 1910.1000). If additional material, not indicated, that may be hazardous to human health upon disturbance during construction operations is encountered, the Contractor shall notify the Contracting Officer immediately. Unless directed otherwise by the Contracting Officer, the Contractor shall test the material to determine if the material is hazardous. If the material is not hazardous or poses no danger, the Contractor shall proceed with the work. If material is hazardous and handling of the material is necessary to accomplish the work, the Government will issue a modification pursuant to "FAR 52.243-4, Changes" and "FAR 52.236-2, Differing Site Conditions."

3.2 PRE-OUTAGE COORDINATION MEETING

Utility outages shall be coordinated with the Contracting Officer in accordance with Section 01 30 00.24 OTHER ADMINISTRATIVE AND SPECIAL REQUIREMENTS or as required in the Task Order.

3.3 CONTROL OF HAZARDOUS ENERGY (LOCKOUT/TAGOUT)

Contractor shall ensure that each employee is familiar with and complies with these procedures and USACE EM 385-1-1, Section 12, Control of Hazardous Energy.

Contracting Officer will, at the Contractor's request, apply lockout/tagout tags and take other actions that, because of experience and knowledge, are known to be necessary to make the particular equipment safe to work on for government owned and operated systems.

No person, regardless of position or authority, shall operate any switch, valve, or equipment that has an official lockout/tagout tag attached to it, nor shall such tag be removed except as provided in this section. No person shall work on any energized equipment including, but not limited to activities such as erecting, installing, constructing, repairing, adjusting, inspecting, un-jamming, setting up, trouble shooting, testing, cleaning, dismantling, servicing and maintaining machines equipment of processes until an evaluation has been conducted identifying the energy source and the procedures which will be taken to ensure the safety of personnel.

When work is to be performed on electrical circuits, only qualified personnel shall perform work on electrical circuits.

A supervisor who is required to enter an area protected by a lockout/tagout tag will be considered a member of the protected group provided he notifies the holder of the tag stub each time he enters and departs from the protected area.

Identification markings on building light and power distribution circuits shall not be relied on for established safe work conditions.

Before clearance will be given on any equipment other than electrical (generally referred to as mechanical apparatus), the apparatus, valves, or

systems shall be secured in a passive condition with the appropriate vents, pins, and locks.

Pressurized or vacuum systems shall be vented to relieve differential pressure completely.

Vent valves shall be tagged open during the course of the work.

Where dangerous gas or fluid systems are involved, or in areas where the environment may be oxygen deficient, system or areas shall be purged, ventilated, or otherwise made safe prior to entry.

3.3.1 Tag Placement

Lockout/tagout tags shall be completed in accordance with the regulations printed on the back thereof and attached to any device which, if operated, could cause an unsafe condition to exist.

If more than one group is to work on any circuit or equipment, the employee in charge of each group shall have a separate set of lockout/tagout tags completed and properly attached.

When it is required that certain equipment be tagged, the Government will review the characteristics of the various systems involved that affect the safety of the operations and the work to be done; take the necessary actions, including voltage and pressure checks, grounding, and venting, to make the system and equipment safe to work on; and apply such lockout/tagout tags to those switches, valves, vents, or other mechanical devices needed to preserve the safety provided. This operation is referred to as "Providing Safety Clearance."

3.3.2 Tag Removal

When any individual or group has completed its part of the work and is clear of the circuits or equipment, the supervisor, project leader, or individual for whom the equipment was tagged shall turn in his signed lockout/tagout tag stub to the Contracting Officer. That group's or individual's lockout/tagout tags on equipment may then be removed on authorization by the Contracting Officer.

3.4 FALL HAZARD PROTECTION AND PREVENTION PROGRAM

Establish a fall protection and prevention program, for the protection of all employees exposed to fall hazards. Within the program include company policy, identify responsibilities, education and training requirements, fall hazard identification, prevention and control measures, inspection, storage, care and maintenance of fall protection equipment and rescue and evacuation procedures.

3.4.1 Training

Institute a fall protection training program. As part of the Fall Hazard Protection and Prevention Program, provide training for each employee who might be exposed to fall hazards. Provide training by a competent person for fall protection in accordance with USACE EM 385-1-1, Section 21.B.

3.4.2 Fall Protection Equipment and Systems

Enforce use of the fall protection equipment and systems designated for

each specific work activity in the Fall Protection and Prevention Plan and/or AHA at all times when an employee is exposed to a fall hazard. Protect employees from fall hazards as specified in EM 385-1-1, Section 21. In addition to the required fall protection systems, safety skiff, personal floatation devices, life rings etc., are required when working above or next to water in accordance with USACE EM 385-1-1, Paragraphs 21.N through 21.N.04. Personal fall arrest systems are required when working from an articulating or extendible boom, swing stages, or suspended platform. In addition, personal fall arrest systems are required when operating other equipment such as scissor lifts if the work platform is capable of being positioned outside the wheelbase. The need for tying-off in such equipment is to prevent ejection of the employee from the equipment during raising, lowering, or travel. Fall protection must comply with 29 CFR 1926.500, Subpart M, USACE EM 385-1-1 and ASSE/SAFE A10.32.

3.4.2.1 Personal Fall Arrest Equipment

Personal fall arrest equipment, systems, subsystems, and components shall meet ASSE/SAFE Z359.1. Only a full-body harness with a shock-absorbing lanyard or self-retracting lanyard is an acceptable personal fall arrest body support device. Body belts may only be used as a positioning device system (for uses such as steel reinforcing assembly and in addition to an approved fall arrest system). Harnesses shall have a fall arrest attachment affixed to the body support (usually a Dorsal D-ring) and specifically designated for attachment to the rest of the system. Only locking snap hooks and carabiners shall be used. Webbing, straps, and ropes shall be made of synthetic fiber. The maximum free fall distance when using fall arrest equipment shall not exceed 6 feet. The total fall distance and any swinging of the worker (pendulum-like motion) that can occur during a fall shall always be taken into consideration when attaching a person to a fall arrest system.

3.4.3 Fall Protection for Roofing Work

Implement fall protection controls based on the type of roof being constructed and work being performed. Evaluate the roof area to be accessed for its structural integrity including weight-bearing capabilities for the projected loading.

a. Low Sloped Roofs:

- (1) For work within 6 feet of an edge, on low-slope roofs, Protect personnel from falling by use of personal fall arrest systems, guardrails, or safety nets.
- (2) For work greater than 6 feet from an edge, erect and install warning lines in accordance with 29 CFR 1926.500 and USACE EM 385-1-1.

b. Steep-Sloped Roofs: Work on steep-sloped roofs requires a personal fall arrest system, guardrails with toe-boards, or safety nets. This requirement also includes residential or housing type construction.

3.4.4 Existing Anchorage

Certified (or re-certified) by a qualified person for fall protection existing anchorages, to be used for attachment of personal fall arrest equipment in accordance with ASSE/SAFE Z359.1. Existing horizontal lifeline anchorages must be certified (or re-certified) by a registered

professional engineer with experience in designing horizontal lifeline systems.

3.4.5 Horizontal Lifelines

Design, install, certify and use under the supervision of a qualified person horizontal lifelines for fall protection as part of a complete fall arrest system (29 CFR 1926.500).

3.4.6 Guardrails and Safety Nets

Design, install and use guardrails and safety nets in accordance with EM 385-1-1 and 29 CFR 1926 Subpart M.

3.4.7 Rescue and Evacuation Procedures

When personal fall arrest systems are used, the Contractor must ensure that the mishap victim can self-rescue or can be rescued promptly should a fall occur. Prepare a Rescue and Evacuation Plan and include a detailed discussion of the following: methods of rescue; methods of self-rescue; equipment used; training requirement; specialized training for the rescuers; procedures for requesting rescue and medical assistance; and transportation routes to a medical facility. Include the Rescue and Evacuation Plan within the Activity Hazard Analysis (AHA) for the phase of work, in the Fall Protection and Prevention (FP&P) Plan, and the Accident Prevention Plan (APP).

3.5 EQUIPMENT

3.5.1 Material Handling Equipment

- a. Material handling equipment such as forklifts shall not be modified with work platform attachments for supporting employees unless specifically delineated in the manufacturer's printed operating instructions.
- b. The use of hooks on equipment for lifting of material must be in accordance with manufacturer's printed instructions.
- c. Operators of forklifts or power industrial trucks shall be licensed in accordance with OSHA.

3.6 EXCAVATIONS

The standards for excavation and trenching are outlined in 29 CFR 1926, Subpart P. Follow these standards in addition to those outlined in USACE EM 385-1-1. The competent person for excavations performed as a result of contract work must be on-site when excavation work is being performed, and must inspect, and document the excavations daily prior to entry by workers. The competent person must evaluate all hazards, including atmospheric, that may be associated with the work, and have the resources necessary to correct hazards promptly.

3.6.1 Utility Locations

Prior to digging, the appropriate digging permit must be obtained. All underground utilities in the work area must be positively identified. Any markings made during the utility investigation must be maintained throughout the contract.

3.6.2 Utility Location Verification

The Contractor must physically verify underground utility locations by hand digging using wood or fiberglass handled tools when any adjacent construction work is expected to come within three feet of the underground system. Digging within 2 feet of a known utility must not be performed by means of mechanical equipment; hand digging shall be used. If construction is parallel to an existing utility expose the utility by hand digging every 100 feet if parallel within 5 feet of the excavation.

3.6.3 Shoring Systems

Trench and shoring systems must be identified in the accepted safety plan and AHA. Manufacturer tabulated data and specifications or registered engineer tabulated data for shoring or benching systems shall be readily available on-site for review. Job-made shoring or shielding must have the registered professional engineer stamp, specifications, and tabulated data. Extreme care must be used when excavating near direct burial electric underground cables.

3.6.4 Trenching Machinery

Operate trenching machines with digging chain drives only when the spotters/laborers are in plain view of the operator. Provide operator and spotters/laborers training on the hazards of the digging chain drives with emphasis on the distance that needs to be maintained when the digging chain is operating. Keep documentation of the training on file at the project site.

3.7 UTILITIES WITHIN CONCRETE SLABS

Utilities located within concrete slabs or pier structures, bridges, and the like, are extremely difficult to identify due to the reinforcing steel used in the construction of these structures. Whenever contract work involves concrete chipping, saw cutting, or core drilling, the existing utility location must be coordinated with station utility departments in addition to a private locating service. Outages to isolate utility systems must be used in circumstances where utilities are unable to be positively identified. The use of historical drawings does not alleviate the contractor from meeting this requirement.

3.8 ELECTRICAL

3.8.1 Conduct of Electrical Work

Underground electrical spaces must be certified safe for entry before entering to conduct work. Cables that will be cut must be positively identified and de-energized prior to performing each cut. Positive cable identification must be made prior to submitting any outage request for electrical systems. Arrangements are to be coordinated with the Contracting Officer and Station Utilities for identification. The Contracting Officer will not accept an outage request until the Contractor satisfactorily documents that the circuits have been clearly identified. Perform all high voltage cable cutting remotely using hydraulic cutting tool. When racking in or live switching of circuit breakers, no additional person other than the switch operator will be allowed in the space during the actual operation. Plan so that work near energized parts is minimized to the fullest extent possible. Use of electrical outages clear of any

energized electrical sources is the preferred method. When working in energized substations, only qualified electrical workers will be permitted to enter. When work requires Contractor to work near energized circuits as defined by the NFPA 70, high voltage personnel must use personal protective equipment that includes, as a minimum, electrical hard hat, safety shoes, insulating gloves with leather protective sleeves, fire retarding shirts, coveralls, face shields, and safety glasses. In addition, provide electrical arc flash protection for personnel as required by NFPA 70E. Insulating blankets, hearing protection, and switching suits may also be required, depending on the specific job and as delineated in the Contractor's AHA.

3.8.2 Portable Extension Cords

Size portable extension cords in accordance with manufacturer ratings for the tool to be powered and protected from damage. Immediately removed from service all damaged extension cords. Portable extension cords shall meet the requirements of NFPA 70E and OSHA electrical standards.

3.9 WORK IN CONFINED SPACES

Comply with the requirements in Section 34 of USACE EM 385-1-1, OSHA 29 CFR 1910.146 and OSHA 29 CFR 1926.21(b)(6). Any potential for a hazard in the confined space requires a permit system to be used.

3.10 AIRFIELD SAFETY PRECAUTIONS (DEC 1991)

If applicable to the Task Order. The Contractor shall acquire permits and approvals prior to working in airfield areas or penetrating air space.

3.10.1 Definitions

As used in this clause-

a. "Landing areas" means:

(1) The primary surfaces, comprising the surface of the runway, runway shoulders, and lateral safety zones. The length of each primary surface is the same as the runway length. The width of each primary surface is 2,000 feet (1,000 feet on each side of the runway centerline);

(2) The "clear zone" beyond the ends of each runway, i.e., the extension of the primary surface for a distance of 1,000 feet beyond each end of each runway.

(3) All taxiways, plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, e.g., a 75-foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet); and

(4) All aircraft parking aprons, plus the area 125 feet in width extending beyond each edge all around the aprons.

b. "Safety precaution areas" means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance, or the

transitional surface.

(1) The "approach-departure clearance surface" is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended.

(a) The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway. It continues upward at a slope of 50:1 (1 foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation. At that point the plane become horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there.

(b) The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone. It then flares uniformly, reaching the maximum width of 16,000 feet at the end.

(2) The "approach-departure clearance zone" is the ground area under the approach-departure clearance surface.

(3) The "transitional surface" is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes.

(a) The inclined plane in each case begins at the edge of the surface.

(b) The slope of the incline plane is 7:1 (1 foot vertically for each 7 feet horizontally). It continues to the point of intersection with the-

(i) Inner horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation); or

(ii) Outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(4) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone, and approach-departure clearance zone.)

3.10.2 General

a. The Contractor shall comply with the requirements of this clause while-

- (1) Operating all ground equipment (mobile or stationary);
- (2) Placing all materials; and
- (3) Performing all work, upon and around all airfields.

b. The requirements of this clause are in addition to any other

safety requirements of this contract.

3.10.3 The Contractor shall

- a. Report to the Contracting Officer before initiating any work;
- b. Notify the Contracting Officer of proposed changes to locations and operations;
- c. Not permit either its equipment or personnel to use any runway for purposes other than aircraft operation without permission of the Contracting Officer, unless the runway is-
 - (1) Closed by order of the Contracting Officer; and
 - (2) Marked as provided in paragraph 3.11.4 b. of this clause;
- d. Keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft;
- e. Operate mobile equipment according to the safety provisions of this clause, while actually performing work on the airfield. At all other times, the Contractor shall remove all mobile equipment to locations-
 - (1) Approved by the Contracting Officer;
 - (2) At a distance of at least 750 feet from the runway centerline, plus any additional distance, and
 - (3) Necessary to ensure compliance with the other provisions of this clause; and
- f. Not open a trench unless material is on hand and ready for placing in the trench. As soon as practicable after material has been placed and work approved, the Contractor shall backfill and compact trenches as required by the contract. Meanwhile, all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

3.10.4 Landing Areas

The Contractor shall:

- a. Place nothing upon the landing areas without the authorization of the Contracting Officer;
- b. Outline those landing areas hazardous to aircraft, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated low-intensity red flasher lights by night;
- c. Obtain, at an airfield where flying is controlled, additional permission from the control tower operator every time before entering any land area, unless the landing area is marked as hazardous in accordance with paragraph 3.11.4 b. of this clause;
- d. Identify all vehicles it operates in landing areas by means of a flag on a staff attached to, and flying above, the vehicle. The flag shall be three feet square, and consist of a checkered pattern of international orange and white squares of 1 foot on each side (except that the flag may

vary up to ten percent from each of these dimensions);

e. Mark all other equipment and materials in the landing areas, using the same marking devices as in paragraph 3.11.4 b. of this clause; and

f. Perform work so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

3.10.5 Safety Precaution Areas

The Contractor shall:

a. Place nothing upon the safety precaution areas without authorization of the Contracting Officer.

b. Mark all equipment and materials in safety precaution areas, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated, low-intensity red flasher lights by night.

c. Provide all objects placed in safety precaution areas with a red light or red lantern at night, if the objects project above the approach-departure clearance surface or above the transitional surface.
(DFAR 252.236-7005)

-- End of Section --

SECTION TABLE OF CONTENTS

DIVISION 01 - GENERAL REQUIREMENTS

SECTION 01 45 01

USACE QUALITY CONTROL

01/08

PART 1 GENERAL

- 1.1 REFERENCES
- 1.2 PAYMENT
- 1.3 SUBMITTALS

PART 2 PRODUCTS

PART 3 EXECUTION

- 3.1 GENERAL REQUIREMENTS
- 3.2 QUALITY CONTROL PLAN
 - 3.2.1 Content of the CQC Plan
 - 3.2.2 Additional Requirements for Design Quality Control (DQC) Plan
 - 3.2.3 Acceptance of Plan
 - 3.2.4 Notification of Changes
- 3.3 COORDINATION MEETING
- 3.4 QUALITY CONTROL ORGANIZATION
 - 3.4.1 Personnel Requirements
 - 3.4.2 CQC System Manager
 - 3.4.3 CQC Personnel
 - 3.4.4 Contract Administrator
 - 3.4.4.1 Qualifications
 - 3.4.5 Manager/Operations Manager
 - 3.4.6 Site Safety and Health Officer (SSHO):
 - 3.4.7 Additional Requirement
 - 3.4.8 Organizational Changes
- 3.5 WORK PLAN
 - 3.5.1 Work Plan
 - 3.5.2 Work Plan Execution
- 3.6 SUBMITTALS AND DELIVERABLES
- 3.7 CONTROL
 - 3.7.1 Preparatory Phase
 - 3.7.2 Initial Phase
 - 3.7.3 Follow-up Phase
 - 3.7.4 Additional Preparatory and Initial Phases
- 3.8 TESTS
 - 3.8.1 Testing Procedure
 - 3.8.2 Testing Laboratories
 - 3.8.2.1 Capability Check
 - 3.8.2.2 Capability Recheck
 - 3.8.3 Onsite Laboratory
 - 3.8.4 Furnishing or Transportation of Samples for Testing
- 3.9 COMPLETION INSPECTION
 - 3.9.1 Punch-Out Inspection

3.9.2	Pre-Final Inspection
3.9.3	Final Acceptance Inspection
3.10	DOCUMENTATION
3.11	SAMPLE FORMS
3.12	NOTIFICATION OF NONCOMPLIANCE
-- End of Section Table of Contents --	

SECTION 01 45 01
USACE QUALITY CONTROL
01/08

PART 1 GENERAL

Attachments: Daily Quality Control Report

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

AMERICAN PETROLEUM INSTITUTE (API)

API Std 653 (2009) Tank Inspection, Repair,
Alteration, and Reconstruction

ASTM INTERNATIONAL (ASTM)

ASTM D 3740 (2008) Minimum Requirements for Agencies
Engaged in the Testing and/or Inspection
of Soil and Rock as Used in Engineering
Design and Construction

ASTM E 329 (2008) Standard Specification for Agencies
Engaged in the Testing and/or Inspection
of Materials Used in Construction

U.S. ARMY CORPS OF ENGINEERS (USACE)

EM 385-1-1 (2008) Safety and Health Requirements
Manual

ER 1110-1-12 (1994) Quality Management

U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

29 CFR 1910.120 Hazardous Waste Operations and Emergency
Response

1.2 PAYMENT

Separate payment will not be made for providing and maintaining an effective Quality Control program, and all associated costs will be included in the applicable CLIN Pricing Schedule unit or lump-sum prices.

1.3 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

Administrative Submittals

Contractor Quality Control Plan;

The written site-specific Contractor Quality Control Plan as specified herein.

Work Plan.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

3.1 GENERAL REQUIREMENTS

The Construction Personnel experience shall be as submitted per the requirements of Section 00 22 00 PROPOSAL SUBMISSION REQUIREMENTS, INSTRUCTIONS AND EVALUATION. If, because of reasons beyond the control of the construction firm, the named individuals are not able to fulfill this obligation, replacement personnel with equal or better skills and experience shall be presented for acceptance by the Contracting Officer. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these designated personnel.

Establish and maintain an effective quality control (QC) system in compliance with the Contract Clause titled "Inspection of Construction." QC consist of plans, procedures, and organization necessary to produce an end product which complies with the contract requirements. Cover all design and construction operations, both onsite and offsite, and be keyed to the proposed design and construction sequence.

The project superintendent will be held responsible for the quality of work and is subject to removal by the Contracting Officer for non-compliance with either the established quality control system or quality requirements specified in this contract. In this context the highest level manager responsible for the overall construction activities at the site, including quality and production is the project superintendent. The project superintendent must maintain a physical presence at the site at all times and is responsible for all construction and related activities at the site, except as otherwise acceptable to the Contracting Officer.

3.2 QUALITY CONTROL PLAN

Submit no later than 10 days after receipt of notice to proceed, the Contractor Quality Control (CQC) Plan proposed to implement the requirements of the Contract Clause titled "Inspection of Construction." The Government will consider an interim plan for the first 30 days of operation. Design and construction will be permitted to begin only after acceptance of the CQC Plan or acceptance of an interim plan applicable to the particular feature of work to be started. Work outside of the accepted interim plan will not be permitted to begin until acceptance of a CQC Plan or another interim plan containing the additional work.

3.2.1 Content of the CQC Plan

Include, as a minimum, the following to cover all design and construction

operations, both onsite and offsite, including work by subcontractors, designers of record, consultants, architect/engineers (AE), fabricators, suppliers, and purchasing agents:

- a. A description of the quality control organization, including a chart showing lines of authority and acknowledgment that the CQC staff will implement the three phase control system for all aspects of the work specified. Include a CQC System Manager who reports to the Project Manager or someone higher in the Contractor's organization. Project Manager in this context means the individual with responsibility for the overall management of the project, including quality and production.
- b. The name, qualifications (in resume format), duties, responsibilities, and authorities of each person assigned a CQC function.
- c. A copy of the letter to the CQC System Manager signed by an authorized official of the firm which describes the responsibilities and delegates sufficient authorities to adequately perform the functions of the CQC System Manager, including authority to stop work which is not in compliance with the contract. Letters of direction to all other various quality control representatives outlining duties, authorities, and responsibilities will be issued by the CQC System Manager. Copies of these letters must be furnished to the Government.
- d. Procedures for scheduling, reviewing, certifying, and managing submittals, including those of subcontractors, designers of record, consultants, architect engineers (AE), offsite fabricators, suppliers, and purchasing agents. These procedures must be in accordance with Section 01 33 00 SUBMITTAL PROCEDURES.
- e. Control, verification, and acceptance testing procedures for each specific test to include the test name, specification paragraph requiring test, feature of work to be tested, test frequency, and person responsible for each test. (Laboratory facilities approved by the Contracting Officer must be used.)
- f. Procedures for tracking preparatory, initial, and follow-up control phases and control, verification, and acceptance tests including documentation.
- g. Procedures for tracking design and construction deficiencies from identification through acceptable corrective action. Establish verification procedures that identified deficiencies have been corrected.
- h. Reporting procedures, including proposed reporting formats.
- i. A list of the definable features of work. A definable feature of work is a task which is separate and distinct from other tasks, has separate control requirements, and may be identified by different trades or disciplines, or it may be work by the same trade in a different environment. Although each section of the specifications may generally be considered as a definable feature of work, there are frequently more than one definable features under a particular section. This list will be agreed upon during the coordination meeting.

3.2.2 Additional Requirements for Design Quality Control (DQC) Plan

The following additional requirements apply to the Design Quality Control (DQC) plan:

(1) Provide and maintain a Design Quality Control (DQC) Plan as an effective quality control program which will assure that all services required by this design-build contract are performed and provided in a manner that meets professional architectural and engineering quality standards. As a minimum, all documents must be technically reviewed by competent, independent reviewers identified in the DQC Plan. The same element that produced the product shall not perform the independent technical review (ITR). Correct errors and deficiencies in the design documents prior to submitting them to the Government.

(2) Include the design schedule in the master project schedule, showing the sequence of events involved in carrying out the project design tasks within the specific contract period. This should be at a detailed level of scheduling sufficient to identify all major design tasks, including those that control the flow of work. Include review and correction periods associated with each item. This should be a forward planning as well as a project monitoring tool. The schedule reflects calendar days and not dates for each activity. If the schedule is changed, submit a revised schedule reflecting the change within 7 calendar days. Include in the DQC Plan the discipline-specific checklists to be used during the design and quality control of each submittal. Submit at each design phase as part of the project documentation these completed checklists. Example checklists can be found in ER 1110-1-12.

(3) Implement the DCQC Plan by an Design Quality Control Manager who has the responsibility of being cognizant of and assuring that all documents on the project have been coordinated. This individual must be a person who has verifiable engineering or architectural design experience and is a registered professional engineer or architect. Notify the Contracting Officer, in writing, of the name of the individual, and the name of an alternate person assigned to the position.

The Contracting Officer will notify the Contractor in writing of the acceptance of the DQC Plan. After acceptance, any changes proposed by the Contractor are subject to the acceptance of the Contracting Officer.

(4) The DQC Manager is responsible for reporting to the overall Project Manager of the Contractor for the design-build contract. The Project Manager will be held responsible for the quality of design on the contract and is subject to removal by the Contracting Officer for non-compliance with the quality requirements specified in the contract.

3.2.3 Acceptance of Plan

Acceptance of the Contractor's plan is required prior to the start of design and construction. Acceptance is conditional and will be predicated on satisfactory performance during the design and construction. The

Government reserves the right to require the Contractor to make changes in his CQC Plan and operations including removal of personnel, as necessary, to obtain the quality specified.

3.2.4 Notification of Changes

After acceptance of the CQC Plan, notify the Contracting Officer in writing of any proposed change. Proposed changes are subject to acceptance by the Contracting Officer.

3.3 COORDINATION MEETING

After the Postaward Conference, before start of design or construction, and prior to acceptance by the Government of the CQC Plan, meet with the Contracting Officer or Authorized Representative and discuss the Contractor's quality control system. Submit the CQC Plan a minimum of 10 calendar days prior to the Coordination Meeting. During the meeting, a mutual understanding of the system details must be developed, including the forms for recording the CQC operations, design activities, control activities, testing, administration of the system for both onsite and offsite work, and the interrelationship of Contractor's Management and control with the Government's Quality Assurance. Minutes of the meeting will be prepared by the Government, signed by both the Contractor and the Contracting Officer and will become a part of the contract file. There may be occasions when subsequent conferences will be called by either party to reconfirm mutual understandings and/or address deficiencies in the CQC system or procedures which may require corrective action by the Contractor.

3.4 QUALITY CONTROL ORGANIZATION

3.4.1 Personnel Requirements

The requirements for the CQC organization are a CQC System Manager, a Design Quality Manager, and sufficient number of additional qualified personnel to ensure safety and contract compliance. Personnel identified in the technical provisions as requiring specialized skills to assure the required work is being performed properly will also be included as part of the CQC organization. The Contractor's CQC staff must maintain a presence at the site at all times during progress of the work and have complete authority and responsibility to take any action necessary to ensure contract compliance. The CQC staff will be subject to acceptance by the Contracting Officer. Provide adequate office space, filing systems and other resources as necessary to maintain an effective and fully functional CQC organization. Promptly complete and furnish all letters, material submittals, shop drawing submittals, schedules and all other project documentation to the CQC organization. The CQC organization shall be responsible to maintain these documents and records at the site at all times, except as otherwise acceptable to the Contracting Officer.

3.4.2 CQC System Manager

Identify as CQC System Manager an individual within the onsite work organization who is responsible for overall management of CQC and have the authority to act in all CQC matters for the Contractor. Unless indicated otherwise in the Task Order, the CQC System Manager must

Possess a Bachelor's Degree in Engineering or Sciences with a minimum of 2 years experience (within the last 10 years), as a Construction CQC, in construction of the installation of work described in Table 1 - Specialized

Work for completed systems.

Or

Have a minimum of 8 years construction experience (within the last 10 years) as a Construction CQC or Superintendent with a minimum of 2 of those 8 years as experience, as a Construction CQC, in construction of the installation of work described in Table 1 - Specialized Work for completed systems.

TABLE 1 - SPECIALIZED WORK

a. Tank rehabilitation. Work consists of construction, repairing, replacing and upgrading coatings, worn components, corrosion and deficiency to the tank systems necessary to make the tank fully functional for support of mission requirements. Components typically include valves, pumps, piping, controls, dikes/berms, structural components (shell/tank bottom), life safety and fire safety systems.

b. Tank cleaning prior to API Std 653 inspection and upgrades. Work includes cleaning to remove residual fuel products, water/sludge removal and preparation of tank for API Std 653 inspection.

c. API Std 653 Inspections and repairs. Tank inspections to determine condition of the tank. The inspection report documents current conditions and requirements for servicing, repairs and upgrades.

d. Fuel receipt, pipeline and transfer facilities construction, repair, upgrade or replacement.

e. Fuel dispensing facilities construction, repair, upgrade or replacement.

f. Construction of fuels support facilities and infrastructure.

g. Demolition of fuel facilities and components.

h. Construction and repair of facilities with high potential for environmental release.

i. Construction, repair and upgrade of facilities to maintain environmental or safety compliance.

j. Construction and repairs to fuel related facilities include infrastructure, and facilities in direct support of the fuel receipt, transfer, quality control, equipment maintenance, and dispensing systems.

This CQC System Manager must be on the site at all times during construction and be employed by the prime Contractor. The CQC System Manager must be assigned as System Manager but may have duties as project superintendent in addition to quality control, as dictated in each Task Order. Identify in the plan an alternate to serve in the event of the CQC System Manager's absence. The requirements for the alternate are the same as the CQC System Manager.

3.4.3 CQC Personnel

Maintain a staff under the direction of the CQC system manager to perform all QC activities including but not limited to Design Quality Control Manager, Contract Administrator, Manager/Operations Manager and Site/Safety

and Health Officer (SSHO). The staff must be of sufficient size to ensure adequate QC coverage of all work phases, work shifts, and work crews involved in the construction. These personnel may perform other duties, but must be fully qualified by experience and technical training to perform their assigned QC responsibilities and must be allowed sufficient time to carry out these responsibilities. The QC plan will clearly state the duties and responsibilities of each staff member. Other technical specifications may specify individuals for maintaining quality control for specific areas of work. Identify a separate Design Quality Control Manager who is a Registered Architect or Professional Engineer. This DQC Manager is considered part of the Contractor's Quality Control staff but reports directly to the overall Project Manager for the Contractor for the design-build contract.

3.4.4 Contract Administrator

The Contract Administrator is responsible for assuring that all acquisition and contract management related to this contract (including, but not limited to, subcontracts, socioeconomic programs, field purchases, rental agreements, modifications) are performed in accordance with the requirements and any contract management procedures (CMP's) agreed to. Where applicable, the Contracts Manager/Specialist is responsible for compliance with federal, state, and local laws and regulations related to federal contract management and acquisition.

3.4.4.1 Qualifications

The Contract Administrator must have the following qualifications:

Possess a business related Bachelor's Degree with a minimum of five years contract administration experience (within the last 10 years) to include contract management, modification management, records management, subcontracting and reviewing contracts.

Or

Have a minimum of 8 years contract administration experience (within the last 10 years) to include contract management, modification management, records management, subcontracting and reviewing contracts

3.4.5 Manager/Operations Manager

The Manager/Operations Manager is responsible for execution of Task Order activities.

The Manager/Operations Manager must have the following qualifications:

Possess a Bachelor's Degree in Architecture, Engineering, Sciences or Construction Management with a minimum of 5 years experience (within the last 10 years) as a Manager/Operations Manager of work described in Table 1 - Specialized Work.

3.4.6 Site Safety and Health Officer (SSHO):

The SSHO is responsible for safety oversight of each task order in accordance with the requirements of Section 01 35 25 GOVERNMENTAL SAFETY STANDARDS.

The SSHO must have the following qualifications:

Completed the 30-hour OSHA Construction safety class or as an equivalent, 30 hours of formal construction safety and health training covering the subjects of the OSHA 30-hour course (See EM 385-1-1 Appendix A, paragraph 4.b) applicable to the work to be performed (Table 1 - Specialized Work) and given by qualified instructors. If the SSHO has the permitted equivalent training, an additional five (5) years of construction industry safety experience or three (3) years if the individual possesses a Certified Safety Professional (CSP) or safety and health degree.

3.4.7 Additional Requirement

In addition to the above experience and/or education requirements the CQC System Manager must have completed the course entitled "Construction Quality Management For Contractors". This course is periodically offered at locations directed by the Contracting Officer or at each of the three area offices in the Omaha District according to the following revolving training schedule:

Black Hills Area 1st Session - Between 1 & 10 March (Ellsworth AFB, SD)
POC: Dwight Pochant - (605) 923-2983
2nd Session - Between 15 & 25 September (Minot AFB, ND)
POC: Trev Albright - (701) 727-6127

Fort Crook Area 1st Session - Between 15 & 25 January (Omaha, NE)
POC: Al Kreisler - (402) 293-2540
2nd Session - Between 15 & 25 May (Ft. McCoy, WI)
POC: Roy Brewer - (608) 388-2143

Rocky Mt'n Area 1st Session - Between 15 & 25 July (Colorado Springs, CO)
2nd Session - Between 1 & 10 December (Colorado Springs, CO)
POC for both sessions:
Jennifer McQueen - (720) 847-2637

The exact date and location for the sessions will be determined approximately 30 days in advance by the trainer (POC). Cost is \$125 per student.

3.4.8 Organizational Changes

Maintain the CQC staff at full strength at all times. When it is necessary to make changes to the CQC staff, revise the CQC Plan to reflect the changes and submit the changes to the Contracting Officer for acceptance.

3.5 WORK PLAN

3.5.1 Work Plan

For each Task Order, the contractor will be required to submit a Work Plan following issuance of the government's scope of services. The Work Plan must be approved by the government prior to start of on-site activities. The Work Plan should fully describe activities that will be performed in the field by the Contractor and shall contain (but not be limited to) the following:

- a. Statement of work and objectives to be accomplished.
- b. Discussion on implementation of the project including the method of operation, type of equipment, personnel required, and other special

considerations.

- c. A schedule that presents the requirements to complete the required fieldwork and key milestones.
- d. Permits, licenses, and certificates, identification number and location of the proposed disposal facilities if necessary.
- e. Key personnel to be used on the project and their responsibilities.
- f. A site description and contaminant characterization including a statement of applicability of 29 CFR 1910.120.
- g. Site-specific contractor management plans.
- h. Site control measures.
- i. Logs, reports, and record keeping to be utilized.

3.5.2 Work Plan Execution

During execution of the task order the Contractor shall follow the approved WP. Any deviation from the plan must be approved by the Contracting Officer or his authorized representative. The Contractor shall utilize his project supervisory staff to ensure that all work performed meets the requirements in the contract, the specific task order, and the approved WP.

3.6 SUBMITTALS AND DELIVERABLES

Submittals, if needed, must comply with the requirements in Section 01 33 00 SUBMITTAL PROCEDURES. The CQC organization is responsible for certifying that all submittals and deliverables are in compliance with the contract requirements. When Section 23 08 00.00 10 COMMISSIONING OF HVAC SYSTEMS are included in the contract, the submittals required by those sections must be coordinated with Section 01 33 00 SUBMITTAL PROCEDURES to ensure adequate time is allowed for each type of submittal required.

3.7 CONTROL

Contractor Quality Control is the means by which the Contractor ensures that the construction, to include that of subcontractors and suppliers, complies with the requirements of the contract. At least three phases of control must be conducted by the CQC System Manager for each definable feature of the construction work as follows:

3.7.1 Preparatory Phase

This phase is performed prior to beginning work on each definable feature of work, after all required plans/documents/materials are approved/accepted, and after copies are at the work site. This phase includes:

- a. A review of each paragraph of applicable specifications, reference codes, and standards. Make available during the preparatory inspection a copy of those sections of referenced codes and standards applicable to that portion of the work to be accomplished in the field. Maintain and make available in the field for use by Government personnel until final acceptance of the work.
- b. Review of the contract drawings.
- c. Check to assure that all materials and/or equipment have been tested, submitted, and approved.
- d. Review of provisions that have been made to provide required

control inspection and testing.

- e. Examination of the work area to assure that all required preliminary work has been completed and is in compliance with the contract.
- f. Examination of required materials, equipment, and sample work to assure that they are on hand, conform to approved shop drawings or submitted data, and are properly stored.
- g. Review of the appropriate activity hazard analysis to assure safety requirements are met.
- h. Discussion of procedures for controlling quality of the work including repetitive deficiencies. Document construction tolerances and workmanship standards for that feature of work.
- i. Check to ensure that the portion of the plan for the work to be performed has been accepted by the Contracting Officer.
- j. Discussion of the initial control phase.
- k. The Government must be notified at least 48 hours in advance of beginning the preparatory control phase. Include a meeting conducted by the CQC System Manager and attended by the superintendent, other CQC personnel (as applicable), and the foreman responsible for the definable feature. Document the results of the preparatory phase actions by separate minutes prepared by the CQC System Manager and attach to the daily CQC report. Instruct applicable workers as to the acceptable level of workmanship required in order to meet contract specifications.

3.7.2 Initial Phase

This phase is accomplished at the beginning of a definable feature of work. Accomplish the following:

- a. Check work to ensure that it is in full compliance with contract requirements. Review minutes of the preparatory meeting.
- b. Verify adequacy of controls to ensure full contract compliance. Verify required control inspection and testing.
- c. Establish level of workmanship and verify that it meets minimum acceptable workmanship standards. Compare with required sample panels as appropriate.
- d. Resolve all differences.
- e. Check safety to include compliance with and upgrading of the safety plan and activity hazard analysis. Review the activity analysis with each worker.
- f. The Government must be notified at least 48 hours in advance of beginning the initial phase. Prepare separate minutes of this phase by the CQC System Manager and attach to the daily CQC report. Indicate the exact location of initial phase for future reference and comparison with follow-up phases.

- g. The initial phase should be repeated for each new crew to work onsite, or any time acceptable specified quality standards are not being met.

3.7.3 Follow-up Phase

Perform daily checks to assure control activities, including control testing, are providing continued compliance with contract requirements, until completion of the particular feature of work. Record the checks in the CQC documentation. Conduct final follow-up checks and correct all deficiencies prior to the start of additional features of work which may be affected by the deficient work. Do not build upon nor conceal non-conforming work.

3.7.4 Additional Preparatory and Initial Phases

Conduct additional preparatory and initial phases on the same definable features of work if: the quality of on-going work is unacceptable; if there are changes in the applicable CQC staff, onsite production supervision or work crew; if work on a definable feature is resumed after a substantial period of inactivity; or if other problems develop.

3.8 TESTS

3.8.1 Testing Procedure

Perform specified or required tests to verify that control measures are adequate to provide a product which conforms to contract requirements. Upon request, furnish to the Government duplicate samples of test specimens for possible testing by the Government. Testing includes operation and/or acceptance tests when specified. Procure the services of a Corps of Engineers approved testing laboratory or establish an approved testing laboratory at the project site. Perform the following activities and record and provide the following data:

- a. Verify that testing procedures comply with contract requirements.
- b. Verify that facilities and testing equipment are available and comply with testing standards.
- c. Check test instrument calibration data against certified standards.
- d. Verify that recording forms and test identification control number system, including all of the test documentation requirements, have been prepared.
- e. Record results of all tests taken, both passing and failing on the CQC report for the date taken. Specification paragraph reference, location where tests were taken, and the sequential control number identifying the test. If approved by the Contracting Officer, actual test reports may be submitted later with a reference to the test number and date taken. Provide an information copy of tests performed by an offsite or commercial test facility directly to the Contracting Officer. Failure to submit timely test reports as stated may result in nonpayment for related work performed and disapproval of the test facility for this contract.

3.8.2 Testing Laboratories

3.8.2.1 Capability Check

The Government reserves the right to check laboratory equipment in the proposed laboratory for compliance with the standards set forth in the contract specifications and to check the laboratory technician's testing procedures and techniques. Laboratories utilized for testing soils, concrete, asphalt, and steel must meet criteria detailed in ASTM D 3740 and ASTM E 329.

3.8.2.2 Capability Recheck

If the selected laboratory fails the capability check, the Contractor will be assessed the actual cost for the recheck to reimburse the Government for each succeeding recheck of the laboratory or the checking of a subsequently selected laboratory. Such costs will be deducted from the contract amount due the Contractor.

3.8.3 Onsite Laboratory

The Government reserves the right to utilize the Contractor's control testing laboratory and equipment to make assurance tests, and to check the Contractor's testing procedures, techniques, and test results at no additional cost to the Government.

3.8.4 Furnishing or Transportation of Samples for Testing

Costs incidental to the transportation of samples or materials will be borne by the Contractor. Samples of materials for test verification and acceptance testing by the Government must be delivered to the Resident or Area (as directed) Office, unless directed otherwise.

Coordination for each specific test, exact delivery location, and dates will be made through the Resident or Area (as directed) Office, unless directed otherwise.

3.9 COMPLETION INSPECTION

3.9.1 Punch-Out Inspection

Conduct an inspection of the work by the CQC Manager near the end of the work, or any increment of the work established by a time stated in the SPECIAL CONTRACT REQUIREMENTS Clause, "Commencement, Prosecution, and Completion of Work", Task Order or by the specifications. Prepare and include in the CQC documentation a punch list of items which do not conform to the approved drawings and specifications, as required by paragraph DOCUMENTATION. Include within the list of deficiencies the estimated date by which the deficiencies will be corrected. Make a second inspection the CQC System Manager or staff to ascertain that all deficiencies have been corrected. Once this is accomplished, notify the Government that the facility is ready for the Government Pre-Final inspection.

3.9.2 Pre-Final Inspection

The Government will perform the pre-final inspection to verify that the facility is complete and ready to be occupied. A Government Pre-Final Punch List may be developed as a result of this inspection. Ensure that all items on this list have been corrected before notifying the Government,

so that a Final inspection with the customer can be scheduled. Correct any items noted on the Pre-Final inspection in a timely manner. These inspections and any deficiency corrections required by this paragraph must be accomplished within the time slated for completion of the entire work or any particular increment of the work if the project is divided into increments by separate completion dates.

3.9.3 Final Acceptance Inspection

The Contractor's Quality Control Inspection personnel, plus the superintendent or other primary management person, and the Contracting Officer's Representative must be in attendance at the final acceptance inspection. Additional Government personnel including, but not limited to, those from Base/Post Civil Facility Engineer user groups, and major commands may also be in attendance. The final acceptance inspection will be formally scheduled by the Contracting Officer based upon results of the Pre-Final inspection. Notify the Contracting Officer at least 14 days prior to the final acceptance inspection and include the Contractor's assurance that all specific items previously identified to the Contractor as being unacceptable, along with all remaining work performed under the contract, will be complete and acceptable by the date scheduled for the final acceptance inspection. Failure of the Contractor to have all contract work acceptably complete for this inspection will be cause for the Contracting Officer to bill the Contractor for the Government's additional inspection cost in accordance with the contract clause titled "Inspection of Construction".

3.10 DOCUMENTATION

Maintain current records providing factual evidence that required quality control activities and/or tests have been performed. Include in these records the work of subcontractors and suppliers on an acceptable form that includes, as a minimum, the following information:

- a. Contractor/subcontractor and their area of responsibility.
- b. Operating plant/equipment with hours worked, idle, or down for repair.
- c. Work performed each day, giving location, description, and by whom. When Network Analysis (NAS) is used, identify each phase of work performed each day by NAS activity number.
- d. Test and/or control activities performed with results and references to specifications/drawings requirements. Identify the control phase (Preparatory, Initial, Follow-up). List of deficiencies noted, along with corrective action.
- e. Quantity of materials received at the site with statement as to acceptability, storage, and reference to specifications/drawings requirements.
- f. Submittals and deliverables reviewed, with contract reference, by whom, and action taken.
- g. Offsite surveillance activities, including actions taken.
- h. Job safety evaluations stating what was checked, results, and instructions or corrective actions. Include information

identified by the "Responsible Individual(s)" for Safety as outlined in Section 01 35 26 GOVERNMENTAL SAFETY STANDARDS and Task Order.

- i. Instructions given/received and conflicts in plans and/or specifications.
- j. Contractor's verification statement.

Indicate a description of trades working on the project; the number of personnel working; weather conditions encountered; and any delays encountered. Cover both conforming and deficient features and include a statement that equipment and materials incorporated in the work and workmanship comply with the contract. Furnish the original and one copy of these records in report form to the Contracting Officer's Representative on the first day following the date(s) covered by the report, except that reports need not be submitted for days on which no work is performed. As a minimum, prepare and submit one report for every 7 days of no work and on the last day of a no work period. All calendar days must be accounted for throughout the life of the contract. The first report following a day of no work will be for that day only. Reports must be signed and dated by the CQC System Manager. Include copies of test reports and copies of reports prepared by all subordinate quality control personnel within the CQC System Manager Report.

3.11 SAMPLE FORMS

Sample forms enclosed at the end of this section.

3.12 NOTIFICATION OF NONCOMPLIANCE

The Contracting Officer will notify the Contractor of any detected noncompliance with the foregoing requirements. Take immediate corrective action after receipt of such notice. Such notice, when delivered to the Contractor at the work site, will be deemed sufficient for the purpose of notification. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to such stop orders will be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

-- End of Section --

CONTRACTORS QUALITY CONTROL REPORT (QCR) DAILY LOG OF CONSTRUCTION - MILITARY		REPORT NUMBER 218		Page 1 of 1	
		DATE 09 Dec 2004 - Thursday			
PROJECT D/B Main Fire Station		CONTRACT NUMBER W9128F-04-C-0013 NA			
CONTRACTOR Bryan Construction		WEATHER Weather Not Entered			
QC NARRATIVES No QC Narratives were reported today					
PREP/INITIAL DATES (Preparatory and initial dates held and advance notice) No preparatory or initial inspections were held today					
ACTIVITY START/FINISH No activities were started or finished today					
QC REQUIREMENTS No QC requirements were completed today					
QA/QC PUNCH LIST (Describe QC Punch List items issued, Report QC and QA Punch List items corrected) No QC Punch List items were issued today No Punch List items were corrected today					
CONTRACTORS ON SITE (Report first and/or last day contractors were on site) No contractors had their first or last day on site today					
LABOR HOURS No labor hours were Reported today Total hours worked to date: 0.0					
EQUIPMENT HOURS No equipment hours were Reported today Total operating hours to date: 0.0					
ACCIDENT REPORTING (Describe accidents) No accidents reported today					
CONTRACTOR CERTIFICATION On behalf of the contractor, I certify that this Report is complete and correct and all equipment and material used and work performed during this Reporting period are in compliance with the contract plans and specifications, to the best of my knowledge, except as noted above.					
QC REPRESENTATIVE'S SIGNATURE		DATE	SUPERINTENDENT'S INITIALS		DATE

This page was intentionally left blank for duplex printing.

SECTION TABLE OF CONTENTS

DIVISION 01 - GENERAL REQUIREMENTS

SECTION 01 62 35

RECYCLED / RECOVERED MATERIALS

07/06

PART 1 GENERAL

- 1.1 REFERENCES
- 1.2 OBJECTIVES
- 1.3 EPA DESIGNATED ITEMS INCORPORATED IN THE WORK
- 1.4 EPA PROPOSED ITEMS INCORPORATED IN THE WORK
- 1.5 EPA LISTED ITEMS USED IN CONDUCT OF THE WORK BUT NOT INCORPORATED
IN THE WORK

-- End of Section Table of Contents --

SECTION 01 62 35

RECYCLED / RECOVERED MATERIALS

07/06

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

40 CFR 247

Comprehensive Procurement Guideline for
Products Containing Recovered Materials

1.2 OBJECTIVES

Government procurement policy is to acquire, in a cost effective manner, items containing the highest percentage of recycled and recovered materials practicable consistent with maintaining a satisfactory level of competition without adversely affecting performance requirements or exposing suppliers' employees to undue hazards from the recovered materials. The Environmental Protection Agency (EPA) has designated certain items which must contain a specified percent range of recovered or recycled materials. EPA designated products specified in this contract comply with the stated policy and with the EPA guidelines. The Contractor shall make all reasonable efforts to use recycled and recovered materials in providing the EPA designated products and in otherwise utilizing recycled and recovered materials in the execution of the work.

1.3 EPA DESIGNATED ITEMS INCORPORATED IN THE WORK

Various sections of the specifications contain requirements for materials that have been designated by EPA as being products which are or can be made with recovered or recycled materials. These items, when incorporated into the work under this contract, shall contain at least the specified percentage of recycled or recovered materials unless adequate justification (non-availability) for non-use is provided. When a designated item is specified as an option to a non-designated item, the designated item requirements apply only if the designated item is used in the work.

1.4 EPA PROPOSED ITEMS INCORPORATED IN THE WORK

Products other than those designated by EPA are still being researched and are being considered for future Comprehensive Procurement Guideline (CPG) designation. It is recommended that these items, when incorporated in the work under this contract, contain the highest practicable percentage of recycled or recovered materials, provided specified requirements are also met.

1.5 EPA LISTED ITEMS USED IN CONDUCT OF THE WORK BUT NOT INCORPORATED IN
THE WORK

There are many products listed in 40 CFR 247 which have been designated or proposed by EPA to include recycled or recovered materials that may be used by the Contractor in performing the work but will not be incorporated into the work. These products include office products, temporary traffic control products, and pallets. It is recommended that these non-construction products, when used in the conduct of the work, contain the highest practicable percentage of recycled or recovered materials and that these products be recycled when no longer needed.

-- End of Section --

This page was intentionally left blank for duplex printing.

SECTION TABLE OF CONTENTS

DIVISION 01 - GENERAL REQUIREMENTS

SECTION 01 78 36.00 24

WARRANTY OF CONSTRUCTION AND DESIGN

4/07

PART 1 GENERAL

- 1.1 WARRANTY OF CONSTRUCTION
- 1.2 ADDITIONAL WARRANTY REQUIREMENTS
 - 1.2.1 Performance Bond
 - 1.2.2 Pre-Warranty Conference
 - 1.2.3 Equipment Warranty Identification
 - 1.2.4 Warranty Service Calls
 - 1.2.5 Equipment Warranty Booklet
- 1.3 SUBMITTALS
- 1.4 EQUIPMENT WARRANTY IDENTIFICATIONS TAGS
 - 1.4.1 GENERAL REQUIREMENTS
 - 1.4.1.1 Tags and Information
 - 1.4.1.2 Tags for Warranted Equipment
 - 1.4.1.3 Exclusion to Providing Tags
 - 1.4.2 EXECUTION
 - 1.4.3 Equipment Warranty Tag Replacement
- 1.5 WARRANTY OF DESIGN

PART 2 NOT USED

PART 3 NOT USED

-- End of Section Table of Contents --

SECTION 01 78 36.00 24

WARRANTY OF CONSTRUCTION AND DESIGN

4/07

PART 1 GENERAL

1.1 WARRANTY OF CONSTRUCTION

(a) Foremost and in addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--

(1) The Contractor's failure to conform to contract requirements;
or

(2) Any defect of equipment, material, workmanship, or design
furnished by the Contractor.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause.

(e) The Contractor's warranty with respect to work restored, repaired or replaced will run for 1 year from the date of restoration, repair or replacement. This provision applies equally to all items restored, repaired, or replaced under paragraph (c) and (d) above.

(f) The Government will notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. Repair work necessary to correct a warranty condition which arises to threaten the health or safety of personnel, the physical safety of property or equipment, or which impairs operations, habitability of living spaces, etc., will be performed by the Contractor on an immediate basis as directed verbally by the Government. Written verification will follow verbal instruction.

(g) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of verbal or written notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(h) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(i) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(j) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(k) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

1.2 ADDITIONAL WARRANTY REQUIREMENTS

1.2.1 Performance Bond

(a) It is understood that the Contractor's Performance Bond will remain effective for one (1) year from the date of acceptance.

(b) If either the Contractor or his representative doesn't diligently pursue warranty work to completion, the contractor and surety will be liable for all costs. The Government, at its option, will either have the work performed by others or require the surety to have it done. Both direct and administrative costs will be reimbursable to the Government.

1.2.2 Pre-Warranty Conference

(a) Prior to contract completion and at a time designated by the Contracting Officer or his authorized representative, the Contractor shall meet with the Contracting Officer or his authorized representative to develop a mutual understanding with respect to the requirements of the Paragraph: WARRANTY OF CONSTRUCTION. Communication procedures for Contractor notification of warranty defects, priorities with respect to the type of defect and other details deemed necessary by the Contracting Officer or his authorized representative for the execution of the construction warranty shall be established/reviewed at this meeting.

(b) In connection with these requirements and at the time of the Contractor's quality control completion inspection, the Contractor will furnish the name, telephone number and address of the service

representative which is authorized to initiate and pursue warranty work action on behalf of the Contractor and surety. This single point of contact will be located within the local service area of the warranted construction, will be continuously available, and will be responsive to Government inquiry on warranty work action and status. This requirement does not relieve the Contractor of any Contractual responsibilities in connection with the paragraph: WARRANTY OF CONSTRUCTION.

(c) Local service area is defined as the area in which the contractor or his representative can meet the response times as described in paragraph 1.2.4 and in any event shall not exceed 200 miles radius of the construction site.

1.2.3 Equipment Warranty Identification

The Contractor shall provide warranty identification tags on all mechanical and electrical equipment installed under this contract. Tags and installation shall be in accordance with the requirements of Paragraph: EQUIPMENT WARRANTY IDENTIFICATION TAGS.

1.2.4 Warranty Service Calls

The Contractor or his local service representative will respond to the site, to a call within the time periods as follows: Four (4) hours for Heating, Air Conditioning, Refrigeration, Air Supply and Distribution, Critical Electrical service Systems and Food Service Equipment and Twenty-Four (24) hours For All Other Systems.

1.2.5 Equipment Warranty Booklet

At or before 30 days prior to final inspection and acceptance of the work, the Contractor shall submit the data mentioned as follows:

The Contractor shall provided a Booklet, which consists of a listing of all equipment items (see paragraphs a. and b. below) which are specified to be guaranteed along with the warranty papers for each piece of equipment. Three (3) legible bound copies of the booklet shall be submitted for approval and shall be indexed alphabetically by equipment type. For each specific guaranteed item, the name, address, and telephone number shall be shown on the list for the subcontractor who installed equipment, equipment supplier or distributor, and equipment manufacturer. Completion date of the guarantee period shall correspond to the applicable specification requirements for each guaranteed item. The names of service representatives that will make warranty calls along with the day, night, weekend and holiday contacts for response to a call within the time period specified shall also be identified.

a. For Equipment in Place: The equipment list shall show unit retail value and nameplate data including model number, size, manufacturer, etc. This would include capital equipment and other nonexpendable supplies of a movable nature that are not affixed as an integral part of the facility and may be removed without destroying or reducing the usefulness of the facility. Some examples are spare parts, special tools, manufacturing equipment, maintenance equipment, instruments, installed under this contract.

b. For Installed Building Equipment: The equipment list shall show unit retail value and nameplate data including model number, size, manufacturer,

etc. This would include items of equipment and furnishings (including material for installation thereof), which are required to make the facility usable and are affixed as a permanent part of the structure. Some examples are plumbing fixtures, laboratory counters and cabinets, kitchen equipment, mechanical equipment, electrical equipment, and fire protection systems installed under this contract.

1.3 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

SD-11 Closeout Submittals

Equipment Warranty Booklet

1.4 EQUIPMENT WARRANTY IDENTIFICATIONS TAGS

1.4.1 GENERAL REQUIREMENTS

The Contractor shall provide warranty identification tags on all Contractor and government furnished equipment which is Contractor installed.

1.4.1.1 Tags and Information

The tags and information shall be similar in format and size to the exhibits provided by this specification, and shall be suitable for interior and exterior locations, resistant to solvents, abrasion, and to fading caused by sunlight, precipitation, etc. These tags shall have a permanent pressure- sensitive adhesive back, and shall be installed in a position that is easily (or most easily) noticeable. If the equipment surface is not suitable for adhesive back, Contractor shall submit his alternative to the Contracting Officer's Authorized Representative for review and approval. Contractor furnished equipment that has differing warranties on its components will have each component tagged.

1.4.1.2 Tags for Warranted Equipment

The tag for his equipment shall be similar to the following:

EQUIPMENT WARRANTY
CONTRACTOR FURNISHED EQUIPMENT
MFG-----MODEL NO.-----
SERIAL NO.-----
CONTRACT NO.-----
CONTRACTOR NAME-----
CONTRACTOR ADDRESS-----

CONTRACTOR TELEPHONE-----
CONTRACTOR WARRANTY EXPIRES-----
IN CASE OF WARRANTY ACTION FIRST CONTACT
[DEH] [BCE] AT [TELEPHONE NUMBER]

EQUIPMENT WARRANTY	
GOVERNMENT FURNISHED EQUIPMENT	
MFG _____	MODEL NO. _____
SERIAL NO. _____	
CONTRACT NO. _____	
DATE EQUIP PLACED IN SERVICE _____	

1.4.1.3 Exclusion to Providing Tags

If the manufacturer's name (MFG), model number and serial number are on the manufacturer's equipment data plate and this data plate is easily found and fully legible, this information need not be duplicated on the equipment warranty tag. The Contractor's warranty expiration date and the final manufacturer's warranty expiration date will be determined as specified by the Paragraph "WARRANTY OF CONSTRUCTION".

1.4.2 EXECUTION

The Contractor will complete the required information on each tag and install these tags on the equipment by the time of and as a condition of final acceptance of the equipment. The Contractor shall be responsible for scheduling acceptance inspection with the Contracting Officer (verbal and written notification required). If this inspection is delayed by the Contractor, the Contractor shall, at his own expense, update the in-service and warranty expiration dates on these tags.

1.4.3 Equipment Warranty Tag Replacement

Under the terms of this contract, the Contractor's warranty with respect to work repaired or replaced shall run for one year from the date of repair or replacement. Such activity shall include a data warranty identification tag on the repaired or replaced equipment. The tag shall be furnished and installed by the Contractor, and shall be similar to the original tag, except that it should include the scope of repair and that the contractor's warranty expiration date will be one year from the date of acceptance of the repair or replacement. In the case of repair, the repair only will be covered by the extended warranty. In the case of replacement of a component, the component only will be covered by the extended warranty. In these cases, the original tags will not be removed, but an additional tag

will be installed for the repair or component replacement.

1.5 WARRANTY OF DESIGN

(a) Foremost and in addition to any other warranties in this contract, the Contractor warrants that the design shall be performed in accordance with the Contract requirements. Design and design related construction not conforming to the Contract requirements shall be corrected at no additional cost to the Government. The standard of care for design is defined in paragraph (b) of Section 01 30 00.24 OTHER ADMINISTRATIVE AND SPECIAL REQUIREMENTS "RESPONSIBILITY OF THE CONTRACTOR FOR DESIGN".

(b) The period of this warranty shall commence upon final completion and the Government's acceptance of the work, or in the case of the Government's beneficial occupancy of all or part of the work for its convenience, prior to final completion and acceptance, at the time of such occupancy.

(c) This design warranty shall be effective from the above event through the Statue of Limitations and Statute of Repose, as applicable to the state that the project is located in.

(d) The rights and remedies of the Government provided for under this clause are in addition to any other rights and remedies provided in this contract or by law.

PART 2 NOT USED

PART 3 NOT USED

-- End of Section --

This page was intentionally left blank for duplex printing.

SECTION TABLE OF CONTENTS

DIVISION 01 - GENERAL REQUIREMENTS

SECTION 01 78 39.00 24

AS-BUILT DRAWINGS

04/07, Rev 08/08

PART 1 GENERAL

- 1.1 DEFINITIONS
 - 1.1.1 Red-Line Drawings
 - 1.1.2 As-Built Drawings
 - 1.1.3 Black-Line Drawings
 - 1.1.4 Full-Size Drawings
 - 1.1.5 Modification Circle
 - 1.1.6 Electronic CADD Files
 - 1.1.7 Accepted Design Drawings
- 1.2 REFERENCES
- 1.3 GENERAL REQUIREMENTS
- 1.4 PAYMENT
- 1.5 TRANSMITTAL OF AS-BUILT DRAWINGS
 - 1.5.1 15 Percent Preliminary As-Built Drawings
 - 1.5.2 100 Percent Preliminary As-Built Drawings
 - 1.5.3 Final As-Built Drawings
 - 1.5.4 As-Built Preparation
 - 1.5.4.1 Not Used
 - 1.5.4.2 Format for AutoCAD (*.DWG) and Microstation V8 (*.DGN) Files
- 1.6 PROCEDURE
- 1.7 TITLE BLOCKS
- 1.8 PROCEDURES FOR POSTING MODIFICATION CHANGES TO DRAWINGS
- 1.9 WORD ABBREVIATIONS
- 1.10 LEGEND SHEETS
- 1.11 CONTRACTOR SHOP DRAWINGS
- 1.12 INDEXING OF DRAWINGS

PART 2 PRODUCTS (NOT APPLICABLE)

PART 3 EXECUTION

- 3.1 GENERAL
- 3.2 SITE WORK
 - 3.2.1 Utilities
 - 3.2.2 Structures
 - 3.2.3 Grades
- 3.3 STRUCTURAL
 - 3.3.1 Steel/Concrete
- 3.4 MECHANICAL
 - 3.4.1 Ductwork
 - 3.4.2 Plumbing
- 3.5 ELECTRICAL
 - 3.5.1 PANELS
 - 3.5.2 Controls

-- End of Section Table of Contents --

SECTION 01 78 39.00 24

AS-BUILT DRAWINGS
04/07, Rev 08/08

PART 1 GENERAL

CADD standards and requirements needed will be defined for each task order.

1.1 DEFINITIONS

The definitions listed below form a part of this specification.

1.1.1 Red-Line Drawings

Accepted design drawings marked-up to show actual work performed to include necessary sketches, modification drawings, shop drawings and notes. Green ink is used to indicate work deleted from the contract. Red ink is used for additions and deviations from the contract.

1.1.2 As-Built Drawings

Professionally finished drawings and Electronic CADD files developed from the accepted design drawings that include all of the information from the redline drawings and suitable for half-size reproduction.

1.1.3 Black-Line Drawings

Paper drawings reproduced from electronic Computer-Aided Design Drawings (CADD) files or high quality reproducible drawings.

1.1.4 Full-Size Drawings

28 inches x 40 inches (841mm x 594mm) nominal size or 22 inches x 33.1 inches (841mm x 558mm) nominal size drawings with all details visually readable, as specified in each Task Order.

1.1.5 Modification Circle

A circle with a horizontal line through the center. The top half will contain the letter "P" with the bottom half containing the Modification number, unless directed otherwise. The lettering standard will be 1/8-inch Arial.ttf.

1.1.6 Electronic CADD Files

Electronic CADD files are files saved on CD-ROM in accordance with appropriate CADD standard. The CADD standard will include level on/off status, special characters, line weights, font, and size requirements.

1.1.7 Accepted Design Drawings

Construction set of complete design drawings, which have been accepted by the Government, for the construction phase of the contract.

1.2 REFERENCES

U.S. ARMY CORPS OF ENGINEERS (USACE)

USACE A/E/C

A/E/C CADD Standards, Most Current Release

<https://cadbim.usace.army.mil/CAD>

1.3 GENERAL REQUIREMENTS

The work includes creation of mylar or bond paper drawings and electronic CADD files in AutoCAD 2006 or Microstation V8, per Each Task Order, for as-built drawings to accurately depict existing conditions of the project. As-Built Drawings will become the permanent record drawings of the construction. The Contractor is responsible for development of electronic CADD files in accordance with USACE A/E/C CADD standards and as directed in each Task Order.

AutoCAD 2006 or Microstation V8 Standard utilize the National CADD standards (USACE A/E/C). The Contractor shall be responsible for furnishing the required CADD software.

The As-Built drawings shall include all major features of the work and all details to the same level as the accepted design set of drawings. All changes from the accepted design drawings shall be shown on the as-builts. Changes include; actual work performed; deviations resulting from Government responses to Requests for Information or Serial letters; and modifications to the contract. Where accepted design drawings or specifications allow for options, only the option selected and actually constructed shall be shown on the As-Built Drawings. Systems designed or enhanced by the Contractor such as HVAC control system, fire alarm system fire sprinkler system, irrigation sprinkler system, and letters of clarification, shall be accurately and neatly recorded on the As-Built Drawings using the same symbols, terminology, and general quality as the original set of accepted design drawings. All sheets affected by a change shall be revised. The transmittal requirements for the As-built Drawings shall be shown as events on the Contractor prepared project schedule.

1.4 PAYMENT

In accordance with the clause "Payment Under Fixed - Price Construction Contracts", which provides for progress payments on estimates of work accomplished (which meets the standards of quality established under the contract), as required by the Task Order will be withheld from payment for the creation of As-Built drawings until the final as-built drawings are delivered to the Contracting Officer (including any necessary revisions and subject to the approval of the Contracting Officer).

The Government will assign the Contractor a performance rating (CCASS for Corps of Engineers projects) upon completion of the project. The timeliness of satisfactory As-Built drawing submittals will be an important factor in determining the assigned rating. An unsatisfactory performance of As-Built drawings creation will be given to the Contractor if the Contractor demonstrates an unwillingness to work with the Government on As-Built drawing creation or the Contractor fails to submit satisfactory Final As-Built drawings within 60 calendar days of turning the completed project over to the Using Service. If satisfactory As-Built drawings are not received within 120 days of turning the project over to the Government,

the Government will utilize the funds withheld to complete the As-Builts.

1.5 TRANSMITTAL OF AS-BUILT DRAWINGS

1.5.1 15 Percent Preliminary As-Built Drawings

The Contractor shall produce 15 percent Preliminary As-Built Drawings indicating as-built conditions on AutoCAD 2006 or Microstation V8, as indicated in each Task Order with "clouding". The Contractor shall contact Jim Janicek at (402)995-2111 before beginning As-Built preparation. As-Built preparation process is provided in paragraph As-Built Preparation below. This as-built set of drawings shall consist of 15 percent of total project drawings. These drawings shall be sheets used for the construction of this project (excludes Cover Sheet, Vicinity Map, Location Plan and Indexes). The As-Built CADD files which include all changes up to the time 15 percent Preliminary Drawings shall be sent as stated below. The Contractor shall draw attention to all drawing changes by "clouding" the affected area. This "clouding" shall be accomplished on AutoCAD or Microstation V8, per task order, layer G-ANNO-REVS] of the drawing file. The 15 Percent Preliminary Drawings shall consist of one (1) set of CADD files on a CD-ROM and one (1) full-size set of the Black-Line Drawings. One (1) set of CADD files on a CD-ROM shall be submitted to the Omaha District Office (ATTN: CENWO-CD-S-TS, Jim Janicek) through the Contracting Officer's Representative (COR). In conjunction with this submission, one (1) full-size set of the Black-Line Drawings shall be submitted to the COR. Both documents shall be submitted at least six (6) weeks prior to the final acceptance inspection unless otherwise directed by the COR. The COR will notify the Contractor in writing of approval / disapproval. The Contractor shall not submit the 100 Percent Preliminary Drawings until he receives the COR's letter approving the 15 Percent Preliminary Drawings.

1.5.2 100 Percent Preliminary As-Built Drawings

Upon receipt of approval of the 15 Percent Preliminary As-Built drawings, the Contractor shall produce 100 Percent Preliminary As-Built Drawings indicating as-built conditions on (AutoCAD 2006 or Microstation V8, as indicated in each Task Order) with "clouding". This as-built set of drawings shall consist of all of the project drawings. The As-Built CADD files and drawings which include all changes up to the time the 100 Percent Preliminary Drawings shall be sent as stated below. The Contractor shall draw attention to all drawing changes by "clouding" the affected area. This "clouding" shall be accomplished on (AutoCAD 2006 or Microstation V8, as indicated in each Task Order) layer G-ANNO-REVS of the drawing file. The 100 Percent Preliminary Drawings shall consist of one (1) set of CADD files on a CD-ROM and one (1) full-size set of the Black-Line Drawings and both shall be submitted to the COR. Both documents shall be submitted at least three (3) weeks prior to the final acceptance inspection unless otherwise directed by the COR. The COR will notify the Contractor in writing of approval / disapproval. The Contractor shall not submit the Final Drawings until he receives the COR's letter approving the 100 Percent Preliminary Drawings.

1.5.3 Final As-Built Drawings

The Contractor shall produce Final As-Built Drawings in AutoCAD 2006 or Microstation V8, as indicated in each Task Order without "clouding". The As-Built preparation process is provided in paragraph As-Built Preparation below. The Final Drawings shall include all changes. The Final Drawings in

the form of a CD-ROM shall be submitted to the COR and Omaha District Office (CENWO-CD-S-TS) no earlier than the day of acceptance of the project and no later than thirty (30) days after the date on the acceptance letter for the Preliminary Drawing unless otherwise directed by the COR. (Note: Final drawings shall not be forwarded to the customer. Corps of Engineers, Omaha District COR will forward to the customer after Quality Review.) Contractor shall submit one (1) set of CADD files on a CD-ROM to the Omaha District Office (ATTN: CENWO-CD-S-TS, Jim Janicek) through the COR. Contractor shall send the following documents to the COR:

a) One (1) set of CADD files on CD-ROM (folder name containing as-built files shall be designated "AS-BUILTS" on each CD-ROM). Both CD case and CD-ROM shall contain the name of the project, location, specification number, and contract number, and words "As-Built Record Set"). The folder shall contain drawings, indexes and reference files related to all as-builts.

b) One (1) full-size set of mylar or bond paper As-Built Drawings, per Task Order, along with All red-lined hard copy drawings prepared by the Contractor during construction.

COR will forward one (1) full-size set of drawings along with CD-ROM to the customer.

1.5.4 As-Built Preparation

Both preliminary and final electronic as-built drawings shall be produced in accordance with the following process for AutoCAD 2006 or Microstation V8 (as indicated in each Task Order) drawings:

1.5.4.1 Not Used

1.5.4.2 Format for AutoCAD (*.DWG) and Microstation V8 (*.DGN) Files

Preparation of As-built Drawings shall be in accordance with USACE A/E/C requirements, as per each Task Order, and/or match the detail shown on the accepted design drawings. The requirements listed below are general guidelines.

- a. When opened, the drawing shall be seen exactly as it should be plotted.
- b. The view shall be zoomed to fit the border.
- c. All information in the title block shall be filled in.
- d. The information in the title block shall be correct.
- e. All files shall reference an AutoCAD or Microstation, as per each task order, border supplied by the Omaha District placed in the layout/sheet model at a scale of 1 and at the location (0,0).
- f. All unnecessary information outside the border shall be deleted.
- g. All files shall be purged/compressed.
- h. All xrefs shall be included.
- i. All fonts used shall be included with the set, even if it is the standard AutoCAD or Microstation fonts, as per each task order.
- j. An ASCII text file shall be provided with the following information: the name and phone number of the person we need to contact if we have problems, and the version of AutoCAD or Microstation used to create and/or work on the drawings.
- k. Pen tables for plotting shall be supplied.
- l. Each sheet/design shall have its own file and file name with only one layout/sheet per design file.

- m. All proxy graphics shall be exploded to allow editing with AutoCAD without the use of Autodesk desktop software. This is not used for Microstation.
- n. Half toning shall be accomplished by using the color 8 and setting the pen table to plot color 8 to half tone.
- o. Any new drawing file added shall have a file name that begins with a project code to be determined in each Task Order.

1.6 PROCEDURE

The Contractor shall create a set of electronic Cadd files and full-size Red-Line Drawings to fully indicate As-Built conditions. The Red-Line Drawings shall be maintained at the site, in a current condition until the completion of the work and shall be available for review by the COR at all times. All as-built conditions shall be on the Red-Line Drawings within two (2) days after the work activity is completed or shall be entered on the deficiency tracking system (see Section 01 45 01, USACE QUALITY CONTROL). The Contractor shall not convert electronic drawing files from one software language to another (i.e. Microstation to AutoCAD or AutoCAD to Microstation).

1.7 TITLE BLOCKS

The contract number and the specification number (if available) shall be shown on all sheets. "RECORD DRAWING" shall be added below the title block on all sheets. All modifications to the contract shall be posted in ascending order. The top line of the revision box shall state "REVISED TO SHOW AS-BUILT CONDITIONS" and dated. All modifications to all plans, sections, or details, shall have a modification number placed in the revision box under column entitled "Symbol" for drawings other than 22" x 33.1" sheet size and over column entitled "Mark" for drawing sheet size 22" x 33.1". The statement "GENERAL REVISIONS" may be used when applicable. The date to be added in the revision box for modifications is found in Block 3 of Form SF-30. Cover Sheet will have Contract Award Set changed to As-Built Record Set with month & year completed. Month and year completed will also go in the date box in the title block. There will be no separate dates.

1.8 PROCEDURES FOR POSTING MODIFICATION CHANGES TO DRAWINGS

Follow directions in the modification for posting descriptive changes.

A Modification Circle shall be placed at the location of each deletion.

The highest modification number on the sheet should be shown in the modification circle in the "DATE" and "DRAWING CODE" boxes of the title block.

For all new details or sections that are added to a drawing, place a Modification Circle by the detail or section title.

For changes to a drawing, place a Modification Circle by the title of the affected plan, section or detail titles (each location).

For changes to schedules on drawings, a Modification Circle shall be placed either by the schedule heading or by the change in the schedule.

The Modification Circle size shall be 1/2-inch diameter unless the area where circle is to be placed is crowded. Use smaller size circle for crowded areas.

1.9 WORD ABBREVIATIONS

Abbreviations shown on the abbreviation sheet shall be used to describe all work items. Additional word abbreviations, not found on the abbreviation sheet but necessary to describe the work, shall be properly identified and incorporated with the other standard word abbreviations. Abbreviations shall conform to USACE A/E/C CAD Standards, unless indicated otherwise in the Task Order.

1.10 LEGEND SHEETS

Symbols, which conflict with those on the original accepted design legend sheet, shall not be used. Additional symbols, necessary to depict any additional work items, shall be properly identified and added to the legend sheet or supplemental legend. Those projects that do not have legend sheets may use supplemental legends on each sheet where symbol is shown.

1.11 CONTRACTOR SHOP DRAWINGS

Contractor shop drawings, which supersede data on the accepted design plans and/or additional drawings, prepared by the Contractor, shall be incorporated into the As-Built Drawings. Design plans prepared by Contractor shall include the designer's name on the As-Built Drawings.

1.12 INDEXING OF DRAWINGS

If drawings are added to the portfolio of drawings to depict as-built conditions, the index of drawings shall be revised accordingly.

PART 2 PRODUCTS (NOT APPLICABLE)

PART 3 EXECUTION

3.1 GENERAL

As-Built drawings shall include as-built information to the same level of detail as shown on the original details, unless otherwise specified. The Contractor shall provide any additional full-size drawings as required to display all the details. In addition, the Geodatabase Files discussed above shall be prepared as shown above, and submitted in conjunction with the As-Built drawings.

3.2 SITE WORK

3.2.1 Utilities

All utilities shall be shown whether active, inactive, shown on the original accepted design drawings, or found on-site. The type of utility, location, general direction, size, material make-up and depth shall be shown. The location and description of any utility line or other installations of any kind known to exist within the construction area shall be shown. The location shall include dimensions to permanent features.

3.2.2 Structures

Structures above and below ground shall be shown. The size, material make-up, location, height, and/or depth shall be shown. Manholes shall show rim elevation and invert elevations as applicable. Power poles shall show

electrical equipment and voltage rating.

3.2.3 Grades

Grade or alignment of roads, structures, or utilities shall be corrected if any changes were made from the contract drawings. Elevations shall be corrected if changes were made in site grading.

3.3 STRUCTURAL

3.3.1 Steel/Concrete

Shop drawings that deviate from the accepted design drawings shall be incorporated in the As-Built Drawings.

3.4 MECHANICAL

3.4.1 Ductwork

Ductwork shall be shown to reflect actual installation and duct size. Ductwork routing changes shall be shown.

3.4.2 Plumbing

Piping and fixtures shall be shown to reflect the type of material, size and the route or location.

3.5 ELECTRICAL

3.5.1 PANELS

All accepted design drawing panel schedules shall be revised to show as-built conditions. Home-run circuit designation on electrical drawings shall accurately correspond to the as-built panel schedules.

3.5.2 Controls

All control diagrams in accepted design drawings shall be revised to reflect as-built conditions, and setpoints.

-- End of Section --

BUILDING STRONG!



**US Army Corps
of Engineers** ®

Omaha District