

<b>SOLICITATION, OFFER, AND AWARD</b> <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO.	2. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 26-Apr-2007	PAGE OF PAGES 1 OF 96
	<b>IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.</b>			

4. CONTRACT NO. W911RQ-07-D-0010	5. REQUISITION/PURCHASE REQUEST NO. SEE SCHEDULE	6. PROJECT NO.
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7. ISSUED BY RED RIVER ARMY DEPOT DIRECTORATE FOR CONTRACTING 100 MAIN DRIVE BUILDING 431 TEXARKANA TX 75507-5000	CODE W911RQ	8. ADDRESS OFFER TO <i>(If Other Than Item 7)</i> CODE  <b>See Item 7</b>
TEL:	FAX:	TEL: FAX:

9. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE NO. <i>(Include area code) (NO COLLECT CALLS)</i>
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**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):*

11. The Contractor shall begin performance within \_\_\_\_\_ calendar days and complete it within \_\_\_\_\_ calendar days after receiving  award,  notice to proceed. This performance period is  mandatory,  negotiable. *(See \_\_\_\_\_ SOW \_\_\_\_\_.)*

12 A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? <i>(If "YES," indicate within how many calendar days after award in Item 12B.)</i> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	12B. CALENDAR DAYS 10
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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 \_\_\_\_\_ *(hour)* local time \_\_\_\_\_ *(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 \_\_\_\_\_ calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

**SOLICITATION, OFFER, AND AWARD (Continued)**

*(Construction, Alteration, or Repair)*

**OFFER (Must be fully completed by offeror)**

14. NAME AND ADDRESS OF OFFEROR *(Include ZIP Code)*  
 H E WRIGHT AND CO INC  
 WILLIAM D. WRIGHT  
 3123 W 7TH ST  
 TEXARKANA TX

15. TELEPHONE NO. *(Include area code)*  
 903-838-8502

16. REMITTANCE ADDRESS *(Include only if different than Item 14)*  
  
**See Item 14**

CODE  
1CFH4

FACILITY CODE  
1CFH4

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 requirements stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)*

AMOUNTS

SEE SCHEDULE OF PRICES

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:

**SEE SCHEDULE**

22. AMOUNT  
\$0.00

23. ACCOUNTING AND APPROPRIATION DATA  
See Schedule

24. SUBMIT INVOICES TO ADDRESS SHOWN IN  
*(4 copies unless otherwise specified)* 1

**ITEM**  
Block 7

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      W911RQ  
 CHARLIE D. HARRIS, JR  
 PHONE: 903-334-2218  
 FAX: 903-334-4141  
 CHARLIE.D.HARRIS@US.ARMY.MIL  
 TEXARKANA TX 75507-5000

27. PAYMENT WILL BE MADE BY:      CODE

**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 or 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 commutes the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

REF:

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN *(Type or print)*

31A. NAME OF CONTRACTING OFFICER *(Type or print)*  
 James P. Tidwell / Contracting Officer

30B. SIGNATURE

30C. DATE

TEL: 903-334-3989

EMAIL: james.patton.tidwell@us.army.mil

31B. UNITED STATES OF AMERICA  
 BY *James Patton Tidwell*

31C. AWARD DATE  
 26-Apr-2007

Section B - Supplies or Services and Prices

NOTE: CLIN

NOTE:

1. The contract line items (CLINS) listed below describe the work that will be purchased under this contract. Offerors are not to enter a price for each line item (0001, 1001, 2001, 3001, and 4001). These items are to be left blank.
2. The total value of this contract will not exceed \$14,990,000.00 over a five year period. The only amount guaranteed is \$120,000 during the base year of the resulting contract. The Depot will have numerous construction projects during the life of this contract. Each of these projects will be provided to the 3 - 5 contractors that are awarded a contract based on their successful participation in the solicitation. The guarantee of \$120,000 is only for one task order, each contractor is not guaranteed a \$120,000 project.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Construction for MATOC - Base Year FFP	100	Each		
	1. Installation & Repair of Utilities (Interior and Exterior)				
	2. Interior and Exterior Alterations				
	3. Interior and Exterior Painting				
	4. Roofing Repairs				
	5. Roads, bridges and hardstands				
	6. Construction and Alteration - Metal Structure				
	7. HVAC Services				
	8. Building Electrical Systems				
	FOB: Destination				
	PURCHASE REQUEST NUMBER: A3E00053011003				
				NET AMT	\$0.00
	ACRN AA				\$0.00
	CIN: A3E000530110030001				

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1001	Construction for MATOC - Option Year 1 FFP 1. Installation & Repair of Utilities (Interior and Exterior) 2. Interior and Exterior Alterations 3. Interior and Exterior Painting 4. Roofing Repairs 5. Roads, bridges and hardstands 6. Construction and Alteration - Metal Structure 7. HVAC Services 8. Building Electrical Systems	100	Each		
	FOB: Destination PURCHASE REQUEST NUMBER: A3E00053012003				
				NET AMT	\$0.00
	ACRN AA CIN: A3E000530120031001				\$0.00

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
2001	Construction for MATOC - Option Year 2 FFP 1. Installation & Repair of Utilities (Interior and Exterior) 2. Interior and Exterior Alterations 3. Interior and Exterior Painting 4. Roofing Repairs 5. Roads, bridges and hardstands 6. Construction and Alteration - Metal Structure 7. HVAC Services 8. Building Electrical Systems	100	Each		
	FOB: Destination PURCHASE REQUEST NUMBER: A3E00053013003				
				NET AMT	\$0.00
	ACRN AA CIN: A3E000530130032001				\$0.00

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
3001	Construction for MATOC - Option Year 3 FFP 1. Installation & Repair of Utilities (Interior and Exterior) 2. Interior and Exterior Alterations 3. Interior and Exterior Painting 4. Roofing Repairs 5. Roads, bridges and hardstands 6. Construction and Alteration - Metal Structure 7. HVAC Services 8. Building Electrical Systems	100	Each		
	FOB: Destination PURCHASE REQUEST NUMBER: A3E00053014003				
				NET AMT	\$0.00
	ACRN AA CIN: A3E000530140033001				\$0.00

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
4001	Construction for MATOC - Option Year 4 FFP 1. Installation & Repair of Utilities (Interior and Exterior) 2. Interior and Exterior Alterations 3. Interior and Exterior Painting 4. Roofing Repairs 5. Roads, bridges and hardstands 6. Construction and Alteration - Metal Structure 7. HVAC Services 8. Building Electrical Systems	100	Each		
	FOB: Destination PURCHASE REQUEST NUMBER: A3E00053015003				
				NET AMT	\$0.00
	ACRN AA CIN: A3E000530150034001				\$0.00

## CLAUSES INCORPORATED BY REFERENCE

52.233-3	Protest After Award	AUG 1996
52.233-4	Applicable Law for Breach of Contract Claim	OCT 2004

Section C - Descriptions and Specifications

MATOC BIDDING SCHEDULE

Prices provided are for EVALUATION PURPOSES and may be used to issue as a Task Order.  
**ALL ITEMS MUST BE COMPLETED AND SUBMITTED WITH PROPOSAL.**

**MULTIPLE AWARD TASK ORDER CONTRACT (MATOC)  
 BID SCHEDULE**

<u>Line</u> <u>Item</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>
<b>1</b>	<b>IN-HOUSE INDIRECT LABOR FORCES</b> Program Manager, Project Manager, Project Superintendent, Quality Control, Cost Estimator, Site Safety, Contract Administrator, etc. (Assigned Under Individual Task Orders)	<b>EA</b>	<b>\$ _____</b>
<b>2</b>	<b>IN-HOUSE DIRECT LABOR FORCES</b> (Assigned Under Individual Task Orders)	<b>EA</b>	<b>\$ _____</b>
<b>3</b>	<b>SUBCONTRACTORS</b>	SubTotal (3A & 3B)	= <b>\$ _____</b>
<b>3A</b>	<b>SUBCONTRACTORS</b> (Assigned Under Individual Task Orders) Competitive price, multiplied by percentage factor.	<b>\$ _____</b>	
<b>3B</b>	<b>SUBCONTRACTORS</b> _____ % G&A and Profit Rates for Prime Contractor Only	<b>\$ _____</b>	
<b>4</b>	<b>CONSULTANTS</b>	SubTotal (4A & 4B)	= <b>\$ _____</b>
<b>4A</b>	<b>CONSULTANTS</b> (Assigned Under Individual Task Orders) Price multiplied by percentage factor.	<b>\$ _____</b>	
<b>4B</b>	<b>CONSULTANTS</b> _____ % G&A and Profit Rates for Prime Contractor Only	<b>\$ _____</b>	
<b>5</b>	<b>MATERIAL AND EQUIPMENT</b>	SubTotal (5A & 5B)	<b>\$ _____</b>
<b>5A</b>	<b>MATERIAL AND EQUIPMENT</b> (Assigned Under Individual Task Orders-See Note 9)	<b>\$ _____</b>	
<b>5B</b>	<b>MATERIAL AND EQUIPMENT</b> _____ % Handling Charge (See Note 10)	<b>\$ _____</b>	
<b>6</b>	<b>TRAVEL (IAW JTR)</b> (Assigned Under Individual Task Orders)	<b>EA</b>	<b>\$ _____</b>
<b>7</b>	<b>PER DIEM (IAW JTR)</b> (Assigned Under Individual Task Orders)	<b>EA</b>	<b>\$ _____</b>
<b>8</b>	<b>COMPETITIVE BID PRICE</b>	<b>LS</b>	<b>\$ _____</b>

Total Project Price for Completion of the Task Order,  
excluding Performance and Payment Bond

<b>9</b>	<b>PERFORMANCE AND PAYMENT BOND</b> (TO BE SPECIFIED ON EACH TASK ORDER)		
<b>9A</b>	<b>Initial Bonding</b> Performance and Payment Bond-\$100,000 ea.	<b>LS</b>	\$ _____
<b>9B</b>	<b>Additional Bonding (per \$1,000.00)</b>	<b>EA</b> <b>1K</b>	\$ _____
	<b>GRAND TOTAL</b>		\$ _____

**BID SCHEDULE NOTES**

1. **Line Items 1 and 2** – These line items will be assigned under individual task orders.
  - a. All labor prices for these line items shall be fully burdened, included but not limited to the following:
    - Wages
    - Indirect overhead and General & Administrative (G&A)
    - Profit
    - Contract Requirements (i.e., Subcontracting Plan management, Quality Control Plan, Safety and Health Plan, Preconstruction Conference)
    - Risk of lower than expected contract dollar volume
    - Risk of poor subcontractor performance and re-performance
    - Other risks associated with doing business with the Government
    - Mobilization and demobilization cost to the Contractor’s organization (associated with the contract).
    - Hand tools
  - b. Labor Costs: The Department of Labor will provide Davis Bacon labor rates. The Government will provide the Contractor with the applicable labor rates where work is to be performed.
2. **Line Item 3** – TOTAL of Subcontractors and G&A plus Profit.
3. **Line Item 3A** – Subcontractors Cost. This line item will be assigned under individual task orders. The line item is for competitive subcontractor costs, excluding the prime contractor’s labor forces, G&A, and Profit.
4. **Line Item 3B** – The line item is for a multiplier for the prime contractor’s indirect costs and profit for subcontractors costs. Give % and \$ amount.
5. **Line Item 4** – TOTAL of Consultants and G&A plus Profit.
6. **Line Item 4A** – This line item will be assigned under individual task orders. The line item is for consultant costs, excluding the prime contractor’s labor forces, G&A, and Profit.
7. **Line Item 4B** – The line item is for a multiplier for the prime contractor’s indirect costs and profit for consultant costs. Give % and \$ amount.
8. **Line Item 5** - TOTAL of Material and Equipment and Handling Charge.
9. **Line Item 5A** – Material and Equipment. This line item will be assigned under individual task orders.

10. **Line Item 5B** – The line is specifically associated with the handling of equipment and materials. All handling costs shall not be included with any other Line Item on the Bid Schedule. The handling charge (cost) shall be shown as a percentage of the total cost of equipment and materials and listed on the proposal for the task order. No other profit or G&A will be paid for these line items. Give % and \$ amount.

11. **Line Item 6 and 7** – These line items will be assigned under individual task orders. These line items will be paid in accordance with rates set by the Joint Travel Regulations (JTR). No profit or indirect costs will be paid for these line items.

12. **Line Item 8** – This line item will be assigned under individual task orders. The line item shall include all costs and prices associated with performing the work contained in the task order, excluding performance and payment bonds.

13. **Line Item 9A and 9B** – In accordance with other Sections, the Government requires the Contractor to submit Performance and Payment Bonds in the amounts listed in the Bid Schedule. The Contractor is informed that he will be reimbursed for bonds on each task order on a per \$1,000.00 basis. No profit or indirect G&A will be paid for these line items.

#### **ADDITIONAL NOTES FOR BID SCHEDULE LINE ITEMS:**

1. Contract(s) awarded pursuant to this request for proposal (RFP) are hybrid contract(s). The intent will be to award from three to five contracts. All work will be on a firm-fixed price basis.

2. **OBLIGATION OF FUNDS:** This is an IDIQ contract(s); therefore, only the Guaranteed Minimum amount for the Base Period (\$120,000) will be obligated for the base year. The \$120,000.00 may or may not be obligated with the award of this contract (s).

3. **ITMRA PROCUREMENT AUTHORITY:** This action is not being conducted under the Information Technology Management Reform Act (ITMRA) of 1996. However, any task orders and modifications requiring Information Technology (IT) resources will be conducted in accordance with the ITMRA.

#### **4. ARITHMETIC DISCREPANCIES: (1989 JUL)**

- a. For the purpose of the initial evaluation of proposals, the following will be utilized in resolving arithmetic discrepancies found on the face of the bidding schedule as submitted by offerors:
  - Obviously misplaced decimal points will be corrected;
  - Discrepancy between unit price and extended price, the unit price will govern;
  - Apparent errors in extension of unit prices will be corrected;
  - Apparent errors in addition of lump-sum and extended prices will be corrected.
- b. For the purposes of offer evaluation, the Government will proceed on the assumption that the offeror intends his offer to be evaluated on the basis of the unit prices, the totals arrived at by the resolution of arithmetic discrepancies as provided above and the offer will be so reflected on the abstract of offers.
- c. These correction procedures shall not be used to resolve any ambiguity concerning which is low bid.

5. **SUBMISSION OF OFFERS:** Offerors must submit an offer on all line items as noted in the bid.

6. **OPTIONS:** The Government reserves the right to exercise the option period in the following ways:

- a. The base period shall be for a **12-month** contract period, starting from the date of award. The option period shall be for a **12-month** contract period, starting from the effective date of the modification executing the option.

- b. The base period and the option shall not exceed 60 months, or \$14,990,000.00 (all contracts combined) -- whichever comes first.

7. **IN-HOUSE LABOR FORCES:** The Prime Contractor's general and administrative, overhead, and profit for In-House Labor Forces (Line Items 1 and 2) will be negotiated for each task order as allowed by Federal Acquisition Regulations (FAR).

8. **MATERIAL HANDLING CHARGE:** Overhead, G&A, profit, and any other costs specifically associated with the handling of materials and equipment. Cost for materials and equipment shall be shown separately on each task order (unless included in a subcontractor's price). The handling charge (cost) shall be shown as a percentage of the total cost of materials and listed on the individual Task Order. No other overhead, G&A and profit will be paid for materials and equipment.

9. **FIRM-FIXED PRICE TASK ORDERS:** Line Items 1, 2, 5, and 9 apply to the Prime Contractor Only. The Prime Contractor shall get at least three (3) competitive quotes on all subcontractors, materials and equipment. The lowest qualified quote shall be selected for the Contractor's proposal on the task order.

10. **BONDING:**

- a. Unless requested by the Contractor in accordance with FAR 52.232-5(g), CONTRACT CLAUSES), the premiums paid for performance and payment bonds associated with the contract award will be reimbursed on a task order basis based on the value of the task order in accordance with the per unit price established in the bidding schedule. The Contractor shall submit a line item bid price to reflect costs for bonding per \$1,000.00. The bid item shall be applied and listed separately on each task order when issued, based on the cost of the construction services.
- b. The premiums paid for performance and payment bonds will not exceed the amount established in the bidding schedule. Upon verification of the bonding premiums as annotated on Standard Form 25 and 25A, the Government may modify the contract to reflect a decrease in the amount bid.

11. **TRAVEL COST:** The Prime Contractor's cost for Line Item 6 will be negotiated for each task order as allowed by Federal Acquisition Regulations (FAR) 31.205-46 Travel costs. (Joint Travel Regulation - <http://www.policyworks.gov/org/main/mt/homepage/mtt/fttr/fttrhp.shtml>)

12. **PER DIEM:** The Prime Contractor's cost for Line Item 7 will be negotiated for each task order as allowed by Federal Acquisition Regulations (FAR). (Per Diem - <http://www.policyworks.gov/org/main/mt/homepage/mtt/perdiem/travel.shtml>)

CLAUSES INCORPORATED BY REFERENCE

52.204-2	Security Requirements	AUG 1996
252.223-7003	Changes In Place Of Performance--Ammunition And Explosives	DEC 1991

CLAUSES INCORPORATED BY FULL TEXT

## 52.216-22 INDEFINITE QUANTITY. (OCT 1995)

(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 **90 days after end of contract.** .

(End of clause)

## CLAUSES INCORPORATED BY FULL TEXT

## 252.204-7004 CENTRAL CONTRACTOR REGISTRATION (52.204-7) ALTERNATE A (NOV 2003)

(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 and has marked the records “Active.”

(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) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by 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)

#### CLAUSES INCORPORATED BY FULL TEXT

252.236-7008 CONTRACT PRICES - BIDDING SCHEDULES. (DEC 1991)

(a) The Government's payment for the items listed in the Bidding Schedule shall constitute full compensation to the Contractor for --

(1) Furnishing all plant, labor, equipment, appliances, and materials; and

(2) Performing all operations required to complete the work in conformity with the drawings and specifications.

(b) The Contractor shall include in the prices for the items listed in the Bidding Schedule all costs for work in the specifications, whether or not specifically listed in the Bidding Schedule.

DESCRIPTION AND WORK SPECS**DESCRIPTION/SPECS/WORK STATEMENT**

**1.0 OBJECTIVE.** This contract is intended to provide rapid response to remediation of real property (i.e. maintenance/repair/minor construction situations relating, but not limited to, the civil, mechanical, plumbing, structural, electrical, HVAC, instrumentation, security and safety areas of Government and civil facilities) as well as new construction in a cost effective manner. See the following Sections for specific tasks.

**1.1 PROJECT SPECS.** Projects Specs will be provided as an attachment.

**2.0 DESCRIPTION.**

**2.1** The Contractor shall provide, upon receipt of a task order, all labor, materials, supplies, parts (to include system components), plant, supervision, equipment, and related services, (except when specified as Government furnished), to repair, construct, and/or maintain military or civil real property facilities and structures within the geographic boundaries as specified in strict accordance with all terms, conditions, special contract/task order requirements, specifications, drawings, attachments, and exhibits contained in the contract or incorporated by reference.

**2.1.1** Contractor's work and responsibility shall include all Contractor planning, programming, administration, and management necessary to provide all remediation (i.e. maintenance, repair, and/or construction and services) and new construction as specified. The work shall be conducted by the Contractor in strict accordance with the contract and all applicable Federal, State, and local laws, regulations, codes, or directives. The Contractor shall provide related services such as preparing and submitting required reports, performing administrative work, and submitting necessary information as specified under this contract and within each task order. The Contractor shall ensure that all work provided meets the scope of work for each task order, and any special specifications included with the individual task order or included in any applicable documents.

**2.1.2** The Government will provide a detailed scope of work to the Contractor detailing the task to be accomplished. The detail provided will vary from a general idea of what is required with no drawings to complete design documents, depending on the complexity of the project. The Contractor shall use the information provided by the Government and submit a complete proposal regardless of how much information is provided by the Government. The proposal shall include the remediation method, labor and materials necessary for performing the work required. For task orders where no drawings are provided by the Government, the Contractor shall provide sketches to clearly show what work is included with his proposal.

**2.1.3** The Contractor shall complete all work and services under this contract in accordance with schedules established in each task order. Submittal dates will be included in the task order. These dates identify when submittals are due in the issuing office and other addresses identified in the task order. Types and numbers of submittals and dates and places for review meetings shall be established by each task order.

\* **2.1.4** Response time is a major consideration in this contract. The Government will determine if a problem is an emergency, urgent, or routine. The full-time on-site Project Manager, with authority to commit vendor, shall comply with the following response times after being notified that a problem exists:

EMERGENCY – 2 hours (around the clock)

URGENT – 1 work day

ROUTINE – up to 5 work days, depending on complexity

**3.0 DEFINITIONS.**

**3.1** The following terms apply to this contract (the list is not all inclusive).

**3.1.1 Site Survey.** An inspection of a facility to evaluate areas which need remediation.

**3.1.2 Feasibility Study.** A study undertaken to determine the cost effectiveness of a proposed facility remedial action.

**3.1.3 Work Plan.** A detailed package consisting of single line diagrams, engineering calculations, criteria, manufacturers' data/cut sheets, specifications, budget estimates, etc., suitable to provide details to remediate a facility

**3.1.4 Facility Remedial Project (FRP).** A project undertaken to correct a situation identified from a site survey, feasibility study, or other sources.

**3.1.5 Remediation Action.** The action taken to implement a work plan; e.g., repair, renovation, new construction.

#### **4.0 SERVICES TO BE PERFORMED.**

**4.1 General Services.** The Contractor shall, commencing upon issuance of a task order, supply all personnel, tools, equipment, transportation, materials, and supervision (except as otherwise noted or provided) to safely and efficiently perform the FRPs. All task orders to be completed under this contract shall be performed in accordance with all applicable safety provisions.

**4.1.1 Contractor's Representative .** The Contractor shall execute the work under the direction of a Contractor Project Manager approved by the Contracting Officer. The full-time on-site Project Manager shall be designated in writing (listing name, address, and local home telephone number). The Project Manager shall be responsible for the overall management and coordination of this contract and shall be the central point of contact with the Government for performance of all work under this contract including warranty. Another individual may be designated to temporarily act for the Project Manager; however, forty-eight (48) hours advance notice, in writing, of such change shall be provided to the Contracting Officer.

**4.1.2 Contractor's Project Manager.** The Contractor's Project Manager shall oversee task accomplishment, administer all instructions, and answer all questions from the Contracting Officer pertaining to the tasks during the life of the contract. The Contractor's Project Manager shall be responsible for the complete coordination of all work under this contract. The Contractor's Project Manager shall be responsible for ensuring that adequate internal controls and review procedures are followed in order to eliminate conflicts, errors and omissions and for ensuring that all technical requirements are met.

**4.1.3 Overall Responsibility.** The Contractor shall be responsible for all site surveys; feasibility studies; calculations; work plans; remediation actions; equipment startups; and testing, repair, and/or training required for satisfactory completion of the FRP as required by each individual task order. This shall include, but not be limited to providing labor, equipment, materials, applicable engineering documentation, and other necessary services and/or products for the remediation, implementation, or testing that may be required by the individual task order.

**4.1.4 Codes and Standards .** The site surveys, work plans, feasibility studies, remedial actions, equipment startup and testing and/or repair shall conform to the requirements of this contract. The Contractor shall adhere to codes and standards as specified herein and in the individual task orders. All codes and standard requirements shall be based on the latest edition of codes applicable at the time the task order is issued. All work shall comply with local, State, National, or military codes, whichever is the most stringent.

**4.1.5 Documentation.** The Contractor shall implement, maintain, and control a system for identification, preparation, reproduction, distribution, and maintenance of all documentation, dates and information necessary for its internal management as well as for Government management of the individual projects and the total program.

**4.1.6 Presentations and Meetings.** Times and locations of presentations and meetings shall be identified in each task order.

**4.1.7 Safety and Health Program.** Site activities performed in conjunction with this program may pose safety hazards which require specialized expertise to effectively address and eliminate. The Contractor shall be responsible for preparing and implementing an effective safety and health program, to include a generic site safety and health plan prepared in accordance with DD Form 1423. This plan shall be capable of being adapted by means of a supplement to the main plan as required by individual task orders.

**4.1.8 Quality Control Program.** The Contractor shall develop, implement, and document an effective quality control plan for the program. Providing a generic site quality control plan prepared in accordance with DD Form 1423. This generic site quality control plan shall be submitted to the Contracting Officer for approval within 30 days, or an agreed to shorter period, after contract award. This plan shall be capable of being adapted by means of a supplement to the main plan as required by individual task orders.

#### **4.2 Specific Services.**

**4.2.1 Permits.** The Contractor shall identify and obtain all permits from Federal, State, local, or installation agencies.

### **5.0 APPROVALS, RESPONSIBILITIES, QUALIFICATIONS FOR LABOR CATEGORIES**

\* **5.1 Staffing Approvals.** Prior to making changes in management staff, the Contractor shall notify the Contracting Officer in writing (within 4 days of changes) in his proposed management staff as set forth in his technical proposal.

**5.1.1** The Contractor shall maintain a management staff with comparable ability and experience to the staff listed in the management proposal. Any changes from the proposed and accepted management staff must be approved by the Contracting Officer. A request for a change to the approved staff must be submitted in writing. A current qualification statement, and reason for changing the personnel, shall be included in the request for approval.

**5.1.2** Resumes that have been previously submitted to the Government need not be a part of the individual task order proposal. Federal, military and civilian, employees shall not be employed by the contractor in performance of any work under the contract, e.g., during off-duty hours, regular hours, or while on annual leave.

#### **5.2 Responsibilities**

**5.2.1 Program Manager.** This is the individual who has the direct responsibility for contract execution. This individual shall serve as the single point of contact and liaison between the Contracting Officer and the Contractor.

**5.2.2 Project Manager.** This is the individual who has the direct responsibility for all operations on the site. This individual may also serve as the safety officer and the site quality control officer, if the dual roles are stated in the individual task order.

**5.2.3 Project Engineer.** This individual shall provide professional engineering services.

**5.2.4 Project Superintendent.** This individual shall supervise the FRP work on site as stated in each task order.

**5.2.5 Contract Administrator.** This individual shall be directly responsible for contract administration.

**5.2.6 Technical Staff.** The technical staff shall consist of architects and engineers, (general, civil, geotechnical, mechanical, electrical, structural, fire protection, and/or safety), technicians and instrumentation specialists (DDC, Fire, security/intrusion detection).

**5.2.7 Quality Control Manager.** This individual shall be directly responsible for the Quality Control Program.

**5.2.7.1 Quality Control Officer.** This individual shall be directly responsible for the site quality control. This position may be held jointly by the project manager, if the dual roles are stated in the individual task order.

**5.2.8 Safety Engineer.** This individual shall be directly responsible for the Safety Program and site safety. This position may be held jointly by the project manager if qualified and the dual roles are stated in the individual task order.

**5.2.8.1 Site Safety Officer.** This individual shall be directly responsible for site safety. This position may be held jointly by the project manager if the project manager if qualified and the dual roles are stated in the individual task order.

**5.2.9 Additional People.** Additional specialized safety and quality control people may be required e.g., Fire Protection, Mechanical controls, HVAC balancing, etc. The contractor may need to hire an outside lab e.g., concrete testing, HTRW testing, welding testing, etc.

**5.3 Minimum Qualifications for Labor Categories.** The Contractor shall possess a variety of skills in order to perform this effort. There is no limitation of the use of employees with qualifications exceeding those listed. Minimum qualification standards for labor categories are set forth below.

#### Professional Level 1

Project Superintendent, Quality Control Manager, Quality Control Office, Site Safety Officer, Computer System Specialist, Contract Administrator, and Engineering Support -Shall have five-years' experience in the related technical field. Professional(s) shall be familiar and conversant with the various codes and standards applicable to facility remediation projects and new construction.

#### Professional Level 2

Architectural, Engineering, Cost Estimator, Training, Computer Scientist, Safety Engineer, Industrial Hygienist, Biologist, Environmentalist, and Agronomist -Shall have a recognized four-year college degree in engineering (or related technical fields) and three-years of design review and engineering or service experience (in unique discipline) in remediation projects, and five-years construction estimating experience. Professional(s) shall be familiar and conversant with the various codes and standards applicable to facility remediation projects and new construction, and may include architects, senior engineers (except safety), training specialist, and technical writers.

#### Professional Level 3

Project Engineer - Shall have a recognized four-year degree in engineering; registered professional engineer; ten-years experience in engineering, design and design review of facilities remediation projects. Professional(s) shall be familiar and conversant with the various codes and standards applicable to facility remediation and new construction tasks covered by the scope of work.

#### Professional Level 4

Program and Project Managers- Shall have a recognized four-year college degree in engineering or related technical field or business/management; experience ten and five years respectively, managing and supervising engineering and facilities remediation projects and new construction. Professional(s) shall be familiar and conversant with the various codes and standards applicable to facility remediation and new construction tasks covered by the scope of work.

## **6.0 ACTIVITIES UNDER FACILITY REMEDIATION AND NEW CONSTRUCTION PROJECTS.**

**6.1 Task Orders.** The activities to be performed by the Contractor under this contract and subsequent task orders are described in general terms below (this list is not all inclusive). The specific tasks to be performed will be identified in each task order. The Contracting Officer reserves the right to modify duties and time periods in the task order. At the completion of each approved task order, the results, documented and conceptual, becomes the property of the Government. The Contracting Officer will decide whether or not to award another task order.

**6.1.1 Site Survey Proposal.** Upon request by the Contracting Officer, the contractor shall submit a site survey proposal in accordance with DD Form 1423.

**6.1.2 Site Survey.** Within 5 working days after the acceptance of the Site Survey Proposal by the Contracting Officer, the contractor shall start a site survey in accordance with DD Form 1423.

**6.1.3 Site Survey Report** Within 10 working days after conclusion of the site visit, the contractor shall prepare and submit to the Contracting Officer, a site survey report in accordance with DD Form 1423.

**6.1.4 Feasibility Study.** When the potential and/or the results of the site survey report justifies it (in the opinion of the Contracting Officer), a feasibility study shall be conducted based on the findings of the site survey report in accordance with DD Form 1423. Feasibility Study shall be submitted within 10 working days after it is requested by the Government, unless the task order states otherwise.

**6.1.5 Work Plan.** A detailed package made up of single line diagrams, engineering calculations, criteria, manufacturers' data/cut sheets, specifications, cost estimates, etc., suitable to provide details to remedy a facility problem or concept for new construction. Registered professional engineers, architects, and Industrial hygienists shall certify with their signature and stamp all task order efforts involving life, safety and/or fire protection situations as well as to certify proper usage of codes and standards. Three types of work plan may be specified under this contract. These are Type 1, Type 2 and Type 3 work plans. Final determination of selection of a work plan type will be specified on the task order or by the Contracting Officer.

**6.1.5.1 Type 1 Work Plan** (DD Form 1423) is one that requires no engineering effort and a minimal level of documentation (e.g., duct cleaning, signage, inspection and minor repairs, etc). It is not for use for repair/renewal projects better suited to the Type 2 or Type 3 Work Plan (see below).

**6.1.5.2 Type 2 Work Plan** (DD Form 1423) is one that requires minimal engineering effort and a minor level of documentation to define the effort proposed for the repair/renewal action. This effort makes maximum use of schedules, manufacturers' data, sketches, etc. and minimizes the use of formal specifications, drawings, etc. utilized in the Type 3 Work Plan, while at the same time providing ample details to carry out the repair/renewal projects (e.g., in-kind equipment replacement, equipment repair, roof replacement, replacement of components (motors, pumps, etc., of existing equipment). It is not for use for repair/renewal projects better suited to the Type 3 Work Plan (see below).

**6.1.5.3 Type 3 Work Plan** (DD Form 1423) is one that requires extensive engineering effort and a detailed level of documentation to define the effort proposed for the repair/renewal action. This effort includes specifications, drawings, schedules, etc. It is intended for the type of work involved in replacement of major equipment, rehabilitation of large or complex facilities, constructing new facilities, equipment replacement involving resizing and similar complex repair/renewal projects.

**6.1.5.4** A final copy of the work plan as detailed in the task order or directed by the Contracting Officer shall be submitted for approval prior to beginning any major action. It is the decision of the Contracting Officer to accept or reject the initial final submittal on its own merit or request a submittal in the form of a back-check final. The back-check final shall be to ascertain that all Government comments from the initial final submittal have been incorporated. In the case where the back-check final is not submitted, the contractor shall still provide to

the Contracting Officer a written response to all review comments. The final work plan shall become the property of the Government and its use in future work/construction shall be the option of the Government. Any pricing proposals including subcontractor quotes shall be considered confidential, if so requested by the Contractor. The Contracting Officer shall decide to accept or reject the preliminary plan on its own merits or to continue through final review. The final review will be to ascertain that all Government review comments from the preliminary review have been incorporated.

**6.1.6 Negotiations** . The negotiations, when required, between the Contracting Officer, and the Contractor, shall begin at a time prescribed by the Government, and convenient to the Contractor. Details covered in negotiations shall include, but not necessarily be limited to:

Scope of Work Plan.

Period of Contract.

Technical Details of Work Plan.

Management of Work Plan.

Cost of Price Proposal

Implementation of the remediation action shall not begin until all disagreements on the above items have been resolved between the Contractor and the Government.

**6.1.7 AWARDED ACTION.** After the remedial action has been awarded (through the medium of a task order) the contractor shall:

**6.1.7.1** Attend a pre-remediation conference with the Contracting Officer for review of the items described in DD Form 1423.

**6.1.7.2** Begin work on the remediation of the facility in accordance with the approved work plan following the approved work schedule. As work progresses, the contractor shall meet the following requirements:

a. Adhere to the approved plan for site safety and health, prepared and submitted in accordance with DD Form 1423, and as modified by the task order.

b. Adhere to the approved quality control program, prepared and submitted in accordance with the comprehensive work schedule based on the proposed work plan in accordance with DD Form 1423, and as modified by the task order.

c. Prepare and certify a comprehensive work schedule based on the proposed work plan in accordance with DD Form 1423.

d. Remediate the facility in accordance with the approved work plan previously submitted on in DD Form 1423.

e. Submit weekly progress reports starting second week after issuance of task order in accordance with DD Form 1423.

f. Maintain a telephone correspondence log in accordance with DD Form 1423.

g. Conduct test of modified system/equipment and obtain Government inspection/approval in accordance with DD Form 1423.

h. Prepare operation and maintenance manuals, for the modified system/equipment in accordance with DD form 1423.

i. Prepare training program and train Government personnel in operation and maintenance of modified system/equipment in accordance with DD Form 1423.

j. Provide equipment and construction warranties in accordance with DD Form 1423.

k. Submit certified list of standard equipment and MFRP service organizations in accordance with DD Form 1423.

l. Certify computer media in accordance with DD Form 1423.

m. Prepare and submit project specific remediation reports including "lessons learned" documents in accordance with DD Form 1423.

**7.0 SUBMITTED SURVEYS, STUDIES, PROPOSALS, AND WORK PLANS.** All surveys, studies, proposals, and work plans submitted to the Contracting Officer will become the property of the Government.

**8.0 ENVIRONMENTAL PROTECTION.** The contractor shall perform all work in such a manner as to minimize the pollution of air, water, or land and to control noise and dust within reasonable limits and in accordance with federal, state, and local environmental laws.

**9.0 ASBESTOS AND LEAD-BASED PAINT.** When work is in areas suspected of containing asbestos or lead-based paint, the contractor shall notify the Contracting Officer immediately. If asbestos and/or lead based paint are encountered during the course of a project, work shall cease immediately and the Contracting Officer shall be notified.

**10.0 SITE SECURITY.** The contractor shall provide site security (fencing, lighting, or guard services) as required by each task order. However, at a minimum, the contractor shall maintain the site and all other contractor-controlled areas in such a manner as to minimize the risk of theft, vandalism, injury, or accident. The contractor shall comply with site security regulations.

**11.0 ACCIDENT REPORTS.** The contractor shall comply with accident reporting requirements as outlined in the U.S. Army Corps of Engineers, Safety and Health Requirements Manual EM 385-1-1, which will be furnished by the Contracting Officer. All accident reports shall be submitted to the Contracting Officer within the time limits prescribed.

**12.0 PUBLIC AFFAIRS.** The contractor shall not publicly disclose any data generated or reviewed under this contract. The contractor shall refer all requests for information concerning site conditions to the Contracting Officer or Ordering Officer for comment.

**13.0 REFERENCES.** The publications listed below form the basis for the remediation work under this contract. Additional references may be identified as required in the task orders. Work done under individual task orders shall utilize the latest issue of the publication dated at the time of the task order award. When a required publication is not referenced in this list or the task order, the contractor shall utilize one that has national applications. Where conflicts arise between publications, the most stringent shall apply.

13.1 American Hospital Association (AHA):

AHA	Maintenance Management for Health Care Facilities
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13.2 American National Standards Institute (ANSI)

ANSI C2	National Electric Safety Code
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13.3 American Society of Heating, Refrigerating, and Air Conditioning Engineers

(ASHRAE):

Handbooks	Refrigeration Fundamentals HVAC System and Equipment HVAC Applications
Standards	Ventilation for Acceptable Indoor Air Quality

13.4 Installation Design Guide

13.5 Code of Federal Regulations (CFR);

29 CFR 1910 Occupational Safety and Health  
Standards - General Construction

29 CFR 1926 Occupational Safety and Health  
Standards -Construction Industry

13.6 Department of the Army, Corps of Engineers Manual (EM): EM 385-1-1 Safety and Health Requirements Manual

13.7 Architectural and Engineering Instructions, Design Criteria (AEIM).

13.8 UFC 4-010-01 "DoD Minimum Antiterrorism Standards For Buildings" dated 31 July 2002 <http://www.hnd.usace.army.mil/techinfo/ufc/ufc4-010-01.pdf>

13.9 DOD 5200.1R Information Security Program

13.10 AFI 31-401 Managing the Information Security Program

13.11 AFSSI 7010 Emission Security Assessments

13.14 National Fire Protection Codes

13.15 Department of the Army, Corps of Engineers Regulations (ER) and Air Force Regulations as applicable **Refer to CCB for Army and Air Force Regulations..**

ER 25-345-1 Military Publications System Operation and Maintenance Documentation

13.16 Department of the Army Regulation (AR): AR 385-40 Accident Reporting Standards

13.17 Department of the Army or Air Force Technical Manuals (TM) as applicable. The following is not intended to be a complete list. Refer to CCB for Army and Air Force TMs:

TM 5-803-14 Site Planning and Design

TM 5-810-1 Mechanical Design, Heating Ventilating, and Air Conditioning,

TM 5-810-4 Compressed Air

TM 5-810-5 Plumbing,

TM 5-811-2 Electric Design, Interior Electrical System

TM 5-811-14 Coordinated Power Systems Protection

TM 5-813-5 Water Supply, Water Distribution

TM 5-814-1 Sanitary and Industrial Wastewater Collection - Gravity Sewers and Appurtenances

TM 5-814-2 Sanitary and Industrial Wastewater Collection - Pumping Stations and Force Mains

TM 5-815-3 Heating, Ventilation, and Air Conditioning (HVAC)

TM 5-820-4 Drainage for Areas Other Than Airfields

TM 5-822-2 General Provisions and Geometric Design for Roads, Streets, Walks, and Open Storage Areas

TM 5-848-1 Gas Distribution

13.18 Joint Commission Accreditation on Health Care Organization (JCAHO):

JCAHO - Joint Commission of Accreditation on Health Care Organizations

13.19 Military Handbooks (MIL-HDBK):

MIL-HDBK-1008B Fire Protection for Facilities Engineering, Design and Construction,

MIL-HDBK-1190 Facility Planning and Design Guide,

MILHDBK-1191 Medical and Dental Treatment Facilities, Design and Construction Criteria

13.20 Engineering Technical Letters (ETL). Refer to CCB for Army and Air Force ETL'S.

13.21 Engineering Pamphlets (EP). Refer to CCB for Army and Air Force EP's.

13.22 Air Force Design Guides: As provided by Air Force.

13.23 Engineering Instructions (EI). Refer to CCB for Army and Air Force EI's.

13.24 Engineering Technical Bulletins (TB). Refer to CCB for Army and Air Force TB's.

13.25 EIRS Bulletins. Refer to Internet for Army and Air Force EIRS.

13.26 National Institute of Technology and Standards

Handbook 135 Life Cycle Cost Analysis

13.27 National Fire Protection Association, Inc. (NFPA):

NFPA 70 National Electric Code

NFPA 80 Doors and Windows NFPA 99 Health Care Facilities

NFPA 101 Safety to Life from Fire in Building and Structures

13.28 Building Codes (52.9101-4000 TM)

All work shall be performed in compliance with the following National Standards and Codes, applicable.

American Institute of Steel Construction (AISC)

American Concrete Institute (ACI)

Uniform Building Code (UBC)

Uniform Plumbing Code (UPC)

Uniform Mechanical Code (UMC)

13.29 Joint Commission Accreditation of Hospitals (JCAH)

13.30 Code of Federal Regulations (CFR)

OSHA General Industry Safety and Health Standards (29 CFR 1910), Publication V2206; and OSHA Construction Industry Standards (29 CFR 1926). One source of these regulations is OSHA Publication 2207, which includes a combination of both Parts 1910 and 1926 as they relate to construction safety and health. Contact the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

13.31 National Emission Standards for Hazardous Air Pollutants (40 CFR, Part 61).

13.32 Federal Standard (Fed. Std. 313A, Material Safety Data sheets, Preparation and the Submission).

13.33 Federal Standard 795, Uniform Federal Accessibility Standards.

13.34 Americans with Disabilities Act (ADA).

## CONDITIONS

## **CONDITIONS**

### **PART 1 GENERAL**

#### **1.1 TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER**

(a) This provision specifies the procedure for 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 following schedule of monthly anticipated adverse weather delays is 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.

**MONTHLY ANTICIPATED ADVERSE WEATHER DELAY  
WORK DAYS BASED ON (5) DAY WORK WEEK**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4	1	1	1	1	1	1	1	1	1	1	1

(c) 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)".

## **1.2 ENVIRONMENTAL LITIGATION**

(a) If the performance of all or any part of the work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, the Contracting Officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor or a Subcontractor at any tier not required by the terms of this contract. If it is determined that the order is not due in any part to acts or omissions of the Contractor or a Subcontractor at any tier other than as required by the terms of this contract, such suspension, delay, or interruption shall be considered as if ordered by the Contracting Officer in the administration of this contract under the terms of the "Suspension of Work" clause of this contract. The period of such suspension, delay or interruption shall be considered unreasonable, and an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) as provided in that clause, subject to all the provisions thereof.

(b) The term "environmental litigation", as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that the Government has not duly considered, either substantively or procedurally, the effect of the work on the environment.

## **1.3 PRE-WARRANTY CONFERENCE**

Prior to contract completion and at a time designated by the Contracting Officer or his representative, the Contractor shall meet with the Contracting Officer to develop a mutual understanding with respect to the requirements of CONTRACT CLAUSE: WARRANTY OF CONSTRUCTION of this specification. The Contracting Officer shall establish communication procedures for Contractor notification of warranty defects, priorities with respect to the type of defect and reasonable time required for Contractor response, and other details deemed necessary by the Contracting Officer for the execution of the construction warranty. In connection with these requirements the Contractor will furnish the name, telephone number, and address of a licensed and bonded company which is authorized to initiate and maintain warranty work action on behalf of the Contractor. This single point of contact will be located within the local service area of the warranted construction and will be responsive to Government inquiry on warranty work action and status. This requirement does not relieve the Contractor of any of his responsibilities in connection with CONTRACT CLAUSE: WARRANTY OF CONSTRUCTION.

## MEASUREMENT AND PAYMENT

### **MEASUREMENT AND PAYMENT**

## 1. LUMP SUM PAYMENT ITEMS

Payment items for the work of this contract for which contract lump sum payments will be made are listed in the BIDDING SCHEDULE and described below. All costs for items of work, which are not specifically mentioned to be included in a particular lump sum or unit price payment item, shall be included in the listed lump sum item most closely associated with the work involved. The lump sum price and payment made for each item listed shall constitute full compensation for furnishing all plant, labor, materials, and equipment, and performing any associated Contractor quality control, environmental protection, meeting safety requirements, tests and reports, and for performing all work required for which separate payment is not otherwise provided.

### 1.2 UNIT PRICE PAYMENT ITEMS

Payment items for the work of this contract on which the contract unit price payments will be made are listed in the BIDDING SCHEDULE and described below. The unit price and payment made for each item listed shall constitute full compensation for furnishing all plant, labor, materials, and equipment, and performing any associated Contractor quality control, environmental protection, meeting safety requirements, tests and reports, and for performing all work required for each of the unit price items.

#### 1.2.1 Excavation and Grading (Land Base)

##### 1.2.1.1 Payment

Land base excavation and grading excavation will be paid at the contract unit price per cubic yard, measured as provided for above, for Bid Item "Excavation and Grading (Land Base)" of the Bidding Schedule, which price and payment thereof shall constitute complete compensation for all materials, labor, plant, equipment, tools and other incidentals necessary to perform the excavation and disposal of the material complete.

##### 1.3.1 Measurement

The volume of material shall be calculated from original cross section surveys taken immediately before excavation begins and final cross sections taken immediately after excavation is complete. Cross sections shall be taken at each station and at all intermediate points necessary to define irregularities. Survey measurements shall be taken to the nearest 1/10th foot and volumes shall be calculated to the nearest whole cubic yard. The volume calculated shall be limited to the actual quantity removed, up to, but not exceeding, the theoretical lines and grades shown on the drawings, unless otherwise directed by the Contracting Officer.

##### 1.3.1.1 Unit of Measure

The unit of measurement for land base excavation and grading will be the cubic yard.

##### 1.3.2 Measurement

The volume of material shall be calculated from original cross section surveys taken immediately before excavation begins and final cross sections taken immediately after excavation is complete and calculated using the average end area method. Cross sections shall be taken at each station and at all intermediate points necessary to define irregularities. Survey measurements shall be taken to the nearest 1/10th foot and volumes shall be calculated to the nearest whole cubic yard. The volume calculated shall be limited to the actual quantity removed, up to, but not exceeding, the theoretical lines and grades shown on the drawings, unless otherwise directed by the Contracting Officer.

##### 1.3.2.2 Unit of Measure

The unit of measurement for excavation (dredging) will be the cubic Yard.

#### 1.3.3 Quarry Run Stone

##### 1.3.3.1 Payment

Payment will be made for costs associated with furnishing, transporting, stockpiling (if applicable), placing, and constructing the stone protection as specified.

#### 1.3.3.2 Measurement

Stone will be measured for payment by the ton (2,000 pounds) by weighing each truckload to the nearest 0.1 ton, and the final quantity of the whole sum will be rounded to the nearest whole ton. The riprap will be measured for payment by being weighed on approved scales before being placed in the work. Quarry weights will not be accepted. Scales shall be of sufficient length to permit simultaneous weighing all axle loads and shall be inspected, tested and sealed as directed to assure accuracy with 0.5 percent throughout the range of the scales. The scales, located at the site of the work, shall be certified as to accuracy by an acceptable scales company representative prior to weighing any riprap. Scales will be checked and certified before riprap hauling and rechecked and recertified whenever a variance is suspected. The Contractor shall furnish the scales. If commercial scales are readily available in close proximity 15 kilometers( 10 miles) of site of work, the Contracting Officer may approve the use of the scales. The riprap shall be weighed in the presence of the Government representative. The Contracting Officer may elect to accept certified weight certificates furnished by a public weighmaster in lieu of scale weights at the jobsite.

#### 1.3.3.3 Unit of Measure

Unit of measure: ton (2,000 pounds).

### 1.3.4 Semi-Compacted Pervious Fill

#### 1.3.4.1 Payment

Semi-compacted pervious fill will be measured and paid for at the contract unit price for Bid Item "Semi-compacted Pervious Fill". Such payment shall constitute full compensation for furnishing all labor, materials, equipment, tools, and incidentals for all work in connection with excavation including loading transportation to and placement of uncompacted pervious materials, complete.

#### 1.3.4.2 Measurement

The unit of measurement for semi-compacted pervious fill will be the cubic yard as determined by cross sections of the area taken after final excavation has been completed and calculated using the average end area method. Measurement will be made to the nearest 1/100-foot and volume determined to the nearest whole cubic yard. A tolerance of one (1) inch will be allowed above or below the specified slope and grade line.



(End of clause)

52.246-4001 INSPECTION AND ACCEPTANCE

Red River Army Depot  
Texarkana, Texas

252.232-7003 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (MAY 2006)

(a) Definitions. As used in this clause--

(1) Contract financing payment and invoice payment have the meanings given in section 32.001 of the Federal Acquisition Regulation.

(2) Electronic form means any automated system that transmits information electronically from the initiating system to all affected systems. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests. However, scanned documents are acceptable when they are part of a submission of a payment request made using one of the electronic forms provided for in paragraph (b) of this clause.

(3) Payment request means any request for contract financing payment or invoice payment submitted by the Contractor under this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests using one of the following electronic forms:

(1) Wide Area WorkFlow-Receipt and Acceptance (WAWF-RA). Information regarding WAWF-RA is available on the Internet at <https://wawf.eb.mil>.

(2) Web Invoicing System (WInS). Information regarding WInS is available on the Internet at <https://ecweb.dfas.mil>.

(3) American National Standards Institute (ANSI) X.12 electronic data interchange (EDI) formats.

(i) Information regarding EDI formats is available on the Internet at <http://www.X12.org>.

(ii) EDI implementation guides are available on the Internet at <http://www.dod.mil/dfas/>.

(4) Another electronic form authorized by the Contracting Officer.

(c) If the Contractor is unable to submit a payment request in electronic form, or DoD is unable to receive a payment request in electronic form, the Contractor shall submit the payment request using a method mutually agreed to by the Contractor, the Contracting Officer, the contract administration office, and the payment office.

(d) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payments requests.

(End of clause)

## Section F - Deliveries or Performance

## DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	UIC
0001	POP 30-APR-2007 TO 29-APR-2008	N/A	N/A FOB: Destination	
1001	POP 30-APR-2008 TO 29-APR-2009	N/A	N/A FOB: Destination	
2001	POP 30-APR-2009 TO 29-APR-2010	N/A	N/A FOB: Destination	
3001	POP 30-APR-2010 TO 29-APR-2011	N/A	N/A FOB: Destination	
4001	POP 30-APR-2011 TO 29-APR-2012	N/A	N/A FOB: Destination	

## Section G - Contract Administration Data

## ACCOUNTING AND APPROPRIATION DATA

AA: Funds will be cited on each delivery order issued

AMOUNT: \$0.00

CIN A3E000530110030001: \$0.00

CIN A3E000530120031001: \$0.00

CIN A3E000530130032001: \$0.00

CIN A3E000530140033001: \$0.00

CIN A3E000530150034001: \$0.00

## CLAUSES INCORPORATED BY FULL TEXT

## 52.232-4001 ELECTRONIC FUND TRANSFER

The government payment office has determined that payment under this contract will be made by Electronic Funds Transfer (EFT). This determination is made in accordance with FAR Clause 52.232-33 and is effective no later than 1 October 1997.

## 52.232-4059 CONTRACTOR INVOICE

Payment will be made via Electronic Fund Transfer to the EFT address loaded in the Central Contractor Register (CCR).

Following are items that must be on your invoice:

1. Name and address of contractor/vendor.
2. Invoice date.
3. Contract or purchase order number.
4. Line item number, with description, quantity, unit of measure, unit price and extended price of supplies delivered or services performed.
5. Shipping and payment terms (for example, shipment number and date of shipment, prompt payment discount terms). Bill of lading number and shipment will be shown for shipments on government bills of lading.
6. Name and address of contractor official to whom payment is to be sent (if remittance is to an address other than that on contract/purchase order, and a proper "Notice of Assignment" or separate remittance address is indicated in contract/purchase order).
7. Name, title, telephone number and mailing address of person to be notified in event of a defective invoice.
8. Any other information or documentation required by the contract/purchase order (evidence of shipment, acceptance test, etc.).

Invoice must be marked "Original".

Mail or fax all invoices to the following address:

DFAS - Rock Island Operating Location  
ATTN: DFAS-RI-FPV Bldg 68  
Rock Island, IL 61299-8300

FAX: 877-426-4270

52.242-4004 ADMINISTERING CONTRACTING OFFICER

NAME: Charlie D. Harris, Jr.

ADDRESS: Red River Army Depot  
100 Main Drive  
ATTN: AMSTA-RR-P  
Texarkana, Texas 75507-5000

TELEPHONE: (903)334-2218  
(903)334-2628 (fax)

E-MAIL: [cdharris@redriver-ex.army.mil](mailto:cdharris@redriver-ex.army.mil)

## Section H - Special Contract Requirements

## CLAUSES INCORPORATED BY FULL TEXT

## 52.216-18 ORDERING. (OCT 1995)

(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 **April 2007** through **April 2012** .

(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.

(End of clause)

## 52.232-16 PROGRESS PAYMENTS (APR 2003)

The Government will make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts of \$2,500 or more approved by the Contracting Officer, under the following conditions:

(a) Computation of amounts. (1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as 80 percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract. The Contracting Officer will consider cost of money that would be allowable under FAR 31.205-10 as an incurred cost for progress payment purposes.

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to subcontractors--

(i) In accordance with the terms and conditions of a subcontract or invoice; and

(ii) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(3) The Government will exclude accrued costs of Contractor contributions under employee pension plans until actually paid unless--

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(4) The Contractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1) of this clause:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to subcontractors or suppliers, except for --

(A) Completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(5) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor

(ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(6) The total amount of progress payments shall not exceed 80 percent of the total contract price.

(7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) of this clause, the Contractor shall repay the amount of such excess to the Government on demand.

(8) Notwithstanding any other terms of the contract, the Contractor agrees not to request progress payments in dollar amounts of less than \$2,500. The Contracting Officer may make exceptions.

(b) Liquidation. Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or 80 percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) Reduction or suspension. The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) of this clause).

(2) Performance of this contract is endangered by the Contractor's --

(i) Failure to make progress or

(ii) Unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) of this clause, and that rate is less than the progress payment rate stated in subparagraph (a)(1) of this clause.

(d) Title.

(1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (d) (2)(ii) of this clause; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract; e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not--

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) Risk of loss. Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for

property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

(f) Control of costs and property. The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) Reports and access to records. The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(h) Special terms regarding default. If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) Reservations of rights.

(1) No payment or vesting of title under this clause shall --

(i) Excuse the Contractor from performance of obligations under this contract or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause

(i) Shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) Financing payments to subcontractors. The financing payments to subcontractors mentioned in paragraphs (a)(1) and (a)(2) of this clause shall be all financing payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to--

(i) The unliquidated remainder of financing payments made; plus

(ii) Any unpaid subcontractor requests for financing payments.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery; or, if the subcontractor is a small business concern, 4 months.

(3) If the financing payments are in the form of progress payments, the terms of the subcontract or interdivisional order concerning progress payments--

(i) Are substantially similar to the terms of this clause for any subcontractor that is a large business concern, or this clause with its Alternate I for any subcontractor that is a small business concern;

- (ii) Are at least as favorable to the Government as the terms of this clause;
- (iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;
- (iv) Are in conformance with the requirements of FAR 32.504(e); and
- (v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if--
  - (A) The Contractor defaults; or
  - (B) The subcontractor becomes bankrupt or insolvent.
- (4) If the financing payments are in the form of performance-based payments, the terms of the subcontract or interdivisional order concerning payments--
  - (i) Are substantially similar to the Performance-Based Payments clause at FAR 52.232-32 and meet the criteria for, and definition of, performance-based payments in FAR Part 32;
  - (ii) Are in conformance with the requirements of FAR 32.504(f); and
  - (iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if--
    - (A) The Contractor defaults; or
    - (B) The subcontractor becomes bankrupt or insolvent.
- (5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments--
  - (i) Are constructed in accordance with FAR 32.206(c) and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR Parts 2 and 12;
  - (ii) Are in conformance with the requirements of FAR 32.504(g); and
  - (iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if--
    - (A) The Contractor defaults; or
    - (B) The subcontractor becomes bankrupt or insolvent.
- (6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.
- (7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.
- (8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(9) To facilitate small business participation in subcontracting under this contract, the Contractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in Subpart 32.113. The Contractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.

(k) Limitations on undefinitized contract actions. Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in 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. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(l) Due date. The designated payment office will make progress payments on the \_\_\_\_\_ (Contracting Officer insert date as prescribed by agency head; if not prescribed, insert "30th") day after the designated billing office receives a proper progress payment request. In the event that the Government requires an audit or other review of a specific progress payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date. Progress payments are considered contract financing and are not subject to the interest penalty provisions of the Prompt Payment Act.

(m) Progress payments under indefinite--delivery contracts. The Contractor shall account for and submit progress payment requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract.

(End of clause)

#### SPECIAL CONTRACT REQUIREMENTS

1. IDENTIFICATION OF EMPLOYEES
2. LANGUAGE
3. LAYOUT OF WORK (APR 1984)
4. WRITTEN GUARANTEES AND GUARANTOR'S REPRESENTATIVE
5. PERFORMANCE EVALUATION OF CONTRACTOR
6. PAYROLLS
7. BASIS FOR SETTLEMENT OF PROPOSALS
8. CONTRADICTION IN QUANTITIES
9. ORDERING OFFICER

10. CONTRACTING OFFICER REPRESENTATIVE (COR)
11. BILLING PROCEDURES
12. TECHNICAL LIAISON AND SURVEILLANCE
13. UNAUTHORIZED INSTRUCTIONS FROM GOVERNMENT PERSONNEL
14. WORK BY THE GOVERNMENT
15. ORDERING PROCEDURES FOR TASK ORDERS
16. COMMENCEMENT OF MOBILIZATION/WORK
17. PRE-CONSTRUCTION CONFERENCE
18. GOVERNMENT-FURNISHED EQUIPEMTN/MATERIALS
19. SCHEDULING WORK
20. OPERATION AND MAINTENANCE
21. ENVIRONMENTAL PROTECTION
22. CONSTRUCTION SITE MAINTENANCE
23. NOISE CONTROL
24. GOVERNMENT EQUIPMENT ON THE SITE
25. TOILET FACILITIES
26. SAFETY AND HEALTH
27. SAFETY ASSURANCE
28. HAZARDOUS MATERIAL
29. PRESERVING HISTORICAL AND ARCHEOLOGICAL FINDS
30. CONTRACTOR STAFF
31. GOVERNMENT-FURNISHED UTILITIES
32. ADP SUPPORT REQUIREMENTS
33. FIRE PREVENTION AND PROTECTION
34. CONTRACT VALUE
35. DELIVERABLES
36. PERMITS AND APPROVALS

37. COMMUNICATIONS EQUIPMENT
38. CERTIFICATES OF COMPLIANCE (SUBMITTALS)
39. WORK HOURS
40. DEVIATION FROM PROPOSED MANAGEMENT PERSONNEL
41. CONSTRUCTION SCHEDULES
42. PROBLEM REPORTING
43. CONSTRUCTION DRAWINGS
44. COMPLETION OF TASK ORDERS
45. NOTICE OF COMPLETION OF TASK ORDER
46. COMPLETION INSPECTION
47. MATERIAL APPROVAL SUBMITTALS
48. SPORADIC WORKLOAD
49. FIRM-FIXED PRICE (FFP) TASK ORDER
50. UNDEFINITIZED TASK ORDER (UTO)
51. BONDS

#### **1. IDENTIFICATION OF EMPLOYEES**

a. The Contractor shall be responsible for furnishing an identification badge/card to each employee prior to commencement of work on site by any employee, and employees shall wear a visible identification badge at all times on the job site. As a minimum, the contractor's name and phone number, employee's photograph, title of contract, and employee name/identification shall be displayed on the identification. All prescribed identification shall immediately be delivered to the Contracting Officer for cancellation upon the release of any employee.

b. **WORK IN SECURE AREA:** In the event that work is required in a secure area, the Contractor shall obtain and submit through the COR to the Installation/Base Physical Security Office fingerprints of all persons employed on the project. Refer to applicable security clauses for additional specific requirements and procedures for obtaining employee identifications.

c. Clothing worn by all contractor employees shall comply with applicable health and safety provisions and shall not include any portion of past or present military uniforms. Official contractor logos and uniforms are permissible.

#### **2. LANGUAGE**

For each work group which employs individuals who do not speak English, the contractor will provide a bilingual foreman who is fluent in the English language and in the language of the workers.

#### **3. LAYOUT OF WORK (APR 1984)**

The Contractor shall lay out its work from Government-established base lines (current or existing baseline data may not be available and the Contractor will be required to establish the baselines for vertical and horizontal control) 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.

#### **4. WRITTEN GUARANTEES AND GUARANTOR'S REPRESENTATIVE**

The Government is entitled to all standard commercially-offered warranties/guarantees. The contractor shall obtain all warranties, have them executed in writing and furnish them to the Contracting Officer prior to final inspection. Additionally, the contractor shall furnish, with each guarantee, the name, address, and telephone number of guarantor's representative who, upon the Contracting Officer's request, will honor the guarantee during the guarantee period and who will provide the services in accordance with the guarantee terms.

#### **5. PERFORMANCE EVALUATION OF CONTRACTOR**

a. As a minimum, the Contractor's performance will be evaluated upon final acceptance of the work. However, interim evaluations (per task order, per quarter, etc.) may be prepared at any time during contract performance when determined to be in the best interest of the Government.

b. The format for the evaluation will be Department of Defense (DD) Form 2626. The Contractor will be rated either outstanding, above average, satisfactory, marginal, or unsatisfactory in the areas of Contractor Quality Control, Timely Performance, Effectiveness of Management, Compliance with Labor Standards, and Compliance with Safety Standards. The Contractor will be advised in writing of any unsatisfactory rating, either in an individual element or in the overall rating, prior to completing the evaluation.

c. In accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 236.201(c)(2), all performance evaluations will be made available to all DoD Contracting offices for their future use in determining contractor responsibility.

#### **6. PAYROLLS**

a. A certified copy of all payrolls shall be submitted to the Ordering Officer or COR on a weekly basis.

b. The contractor shall be responsible for the submission of certified copies of the payrolls for all subcontractors.

#### **7. 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.

## **8. CONTRADICTION IN QUANTITIES**

Any contradiction in quantities requested (i.e., 6 copies required by the CONTRACT DATA REQUIREMENTS LIST and 4 copies required by Division I specifications) the greater quantity shall be provided.

## **9. ORDERING OFFICER**

There will be no Ordering Officer assigned to this contract.

## **10. CONTRACTING OFFICER REPRESENTATIVE (COR)**

The Contracting Officer Representative (COR) for each task order will be designated by letter after the task order award.

## **11. BILLING PROCEDURES**

a. The contractor shall submit, at least monthly, billings in accordance with the clause entitled "Allowable Cost and Payment". All documents submitted for payment shall reference that accounting and appropriation data set forth in the individual task order.

b. Billings for fixed price orders shall be submitted pursuant to the "Payments" clause.

## **12. TECHNICAL LIAISON AND SURVEILLANCE**

a. Performance by the contractor of the technical aspects of this contract as described in the Scope of Work. All matters relating solely to the technical aspects of the contractor's performance may be communicated directly to the technical point of contact named in paragraph c below. This clause is governed by the following:

b. No changes in the scope of work within the task order or within the scope of this contract, which would effect a change in any term or clause of this contract, shall be made, except by a modification executed by the Contracting Officer. The contractor is responsible to ensure that all contractor personnel are knowledgeable and cognizant of this contract clause. Changes to contract efforts accepted and performed by contractor personnel outside of the contract, without authorization of the Contracting Officer, shall be the responsibility of the contractor.

c. The technical point of contact will be identified in each individual task order.

## **13. UNAUTHORIZED INSTRUCTIONS FROM GOVERNMENT PERSONNEL**

a. The contractor shall not accept any instructions issued by any person employed by U.S. Government or otherwise, other than the Contracting Officer, or the Administrative Contracting Officer (ACO) and/or the Contracting Officer's Representative (COR) acting within the limits of their authority. The ACO and COR, and the scope of their authority, will be designated in writing and identified to the contractor.

b. Only information contained in an authorized amendment or modification to the contract issued by the Contracting Officer, or a modification to a task order duly issued by the Contracting Officer, ACO or COR, may be considered

by the contractor as grounds for deviation from any stipulation of this contract, any modification, referenced drawings, and/or specifications. No information received from any person employed by the Government, other than the Contracting Officer, shall be considered as grounds for deviations from the specified stipulations.

#### **14. WORK BY THE GOVERNMENT**

The Government reserves the right to undertake performance by Government forces or other Contractors, the same type or similar work as contracted for herein, as the Government deems necessary or desirable. Such action on the behalf of the Government will not breach or otherwise violate this contract.

#### **15. ORDERING PROCEDURES FOR TASK ORDERS**

a. More than one contract (but no more than five contracts) is anticipated on being awarded for the same services as this contract. All task orders may not be offered to all vendors all the time.

b. The Contracting Officer or his/her authorized representative, in making decisions in the award of any individual task order, shall consider factors such as past performance on earlier tasks under the multiple award contract, quality of deliverables, cost control, price, cost, or other factors that the contracting officer believes are relevant to the award of a task order to an awarded under the contract.

c. If the Contractor believes it was not fairly considered for a particular task order, the Contractor may present the matter to the Contracting Officer. The Contractor may appeal the explanation or decision of the Contracting Officer or to the USACE Ombudsman. The Ombudsman will review the Contractor's complaint, and in coordination with the Contracting Officer, ensure that the Contractor was afforded a fair opportunity to be considered for the task order.

d. As the need exists for performance under the terms of this contract, the Contracting Officer or his/her authorized representative will notify the Contractor(s), in writing, of an existing requirement. Task orders shall be issued competitively.

COMPETITIVELY: When the scope of work is clearly defined; a Request for Proposal (RFP) could be issued to selected/all multiple contract contractors, with the scope of work and all attachments (i.e., drawings, list of specifications); and a date, time and location for proposal to be due.

g. The Government may determine the appropriate liquidated damages per task order. (See "LIQUIDATED DAMAGES--CONSTRUCTION.")

h. Task orders will then be issued using a DD Form 1155. Each task order will include the following information:

- (1) Date of the task order.
- (2) Contract number, task order number, and performance period in calendar days.
- (3) Item number and description, quantity and unit prices.
- (4) Task order price, delivery or performance data.
- (5) Accounting and appropriation data.
- (6) Any other pertinent data. (Scope of Work, drawings, etc.)

i. It should be realized by the Contractor that unforeseen circumstances may prohibit the Government from issuing an individual task order even after the receipt of the Contractor's bid/proposal; or after the task order proposals have been opened. If such circumstances arise, the Government is not obligated to reimburse the Contractor for any costs incurred in the preparation of the task order bid/proposal, site visit for the Contractor/subcontractors and related expenses.

#### **16. COMMENCEMENT OF MOBILIZATION/WORK**

- a. The Contractor shall commence any mobilization and familiarization activities prior to actual work on individual task orders as soon after contract award as practicable. The contractor shall be able to perform site visits, submit cost proposals, and negotiate task orders with the Government two (2) hours after contract award. The Contractor shall be fully operational and capable of immediately starting physical work on any task order within 45 calendar days after contract award.
- b. WITHIN 10 CALENDAR DAYS UPON NOTIFICATION OF AWARD THE CONTRACTOR SHALL: Submit Performance and Payment Bonds to the Contracting Officer.
- c. WITHIN 5 WORKING DAYS OF ACCEPTANCE OF PERFORMANCE AND PAYMENT BONDS THE CONTRACTOR SHALL: Meet with the Contracting Officer's authorized representative to establish the agenda for the pre-construction conference.
- d. WITHIN 45 CALENDAR DAYS OF AWARD THE CONTRACTOR SHALL:
- (1) Have all critical staff members available.
  - (2) Be fully operational and capable of immediately starting physical work on any task orders previously negotiated with the Government and on any required task orders.

## **17. PRE-CONSTRUCTION CONFERENCE**

a. Initial Conference. When determined appropriate by the Contracting Officer, before the issuance of the first task order under the contract, a conference will be conducted by the Contracting Officer's Representative to acquaint the Contractor with Government policies and procedures that are to be observed during the prosecution of the work and to develop a mutual understanding relative to the administration of the contract.

(1) Authority of the Authorized Representative of the Contracting Officer and Organization of Project Office.

- (2) Contractor's Safety Program.
- (3) Contractor's Environmental Protection Plan.
- (4) Quality Control Plan.
- (5) Correspondence Procedures.
- (6) Contractor's Labor Standard Provisions.
- (7) Contractor's Plan of Operations.
- (8) Contract Modifications and Administrative Procedures.
- (9) Contractor's Job Layout and Storage Area.
- (10) Payment Estimate Data and procedures.
- (11) Contractor Utilities.
- (12) Security Requirements, and other Regulations, if applicable,
- (13) Government Furnished Material, if applicable.
- (14) Disposition of Salvage Property.
- (15) Contractor's Insurance Requirements.

b. Individual Task Order Conferences. Conferences will be held on all task orders except those deemed not necessary by the Contracting Officer's Representative.

NOTE: The Contractor shall submit the plans for items (2), (3) and (4) prior to the Pre-Construction Conference for review prior to the conference. These plans may be approved in or approved with comments at the conference. Construction work will not proceed until after this conference has been held and the plans (2) and (4) have been approved and a valid work order has been received by the Contractor.

## **18. GOVERNMENT-FURNISHED EQUIPMENT/MATERIALS**

a. If Government property is furnished as part of a task order, it will be identified on the individual task orders. The Government property will be received, loaded and transported from the storage site by the contractor. The contractor shall be required to establish a hand receipt with the appropriate Property Book Officer to receive the supplies as directed by the Contracting Officer.

- b. The Contractor assumes the risk and responsibility for the loss or damage to Government-furnished property as defined in FAR 52.245-2.
- c. The Contractor shall follow the instructions of the Contracting Officer or his designated representative regarding the disposition of all Government furnished property not consumed in performance of a task order.

## **19. SCHEDULING WORK**

- a. Before commencement of work under a task order, the Contractor shall confer with the Contracting Officer and agree on a sequence of procedures; means of access to premises and building; space for storage of materials, fixtures and equipment (excluding computers); delivery of materials and use of approach; use of corridors, stairways, elevators; means of communications; location of partitions, eating spaces, and restrooms for Contractor's employees, etc. A pre-construction conference may be scheduled at the discretion of the Contracting Officer or his designated representative.
- b. Most work will be performed in occupied areas. Furniture and portable office equipment in the immediate area shall be moved by the Contractor and replaced to its original position. If the work required by the task order will not allow for replacing furniture and portable office equipment in its original location, the contractor shall replace those items in new locations as assigned by the Contracting Officer or his designated representative. Delivery of materials and equipment shall be made with a minimum of interference to Government operations and personnel.
- c. When detours or street closures are required either during regular duty hours or non-duty hours, the contractor shall notify the Contracting Officer or his designated representative, in writing, at least ten (10) calendar days in advance of the occurrence, describing the circumstances and requesting approval. One lane of traffic shall be maintained at all times unless otherwise approved in writing by the Contracting Officer or authorized representative. The contractor shall be responsible for providing all necessary traffic control, such as street blockages, traffic cones, flagmen, etc., as required for each task order at no additional cost to the Government. The final street repair shall be completed within 14 days after the start of any street demolition for utility crossings or other purposes. Any part of the street returned to services prior to final repair shall be maintained smooth with hot-mix cold-lay surface course. Proposed traffic control methods shall comply with the Uniform Traffic Control Device Manual and shall be submitted to the Contracting Officer or his designated representative for final approval.
- d. At the end of each working day, the contractor shall notify the Contracting Officer or his representative of the locations of work to be accomplished the following work day via daily inspection logs.
- e. Work which requires tapping into existing electrical, sewer, water, storm sewer, air lines, controls, alarms, telephone wires, etc., shall be performed in a manner which causes minimum interference with Government operations.
  - (1) Where possible, and as directed by the Contracting Officer or his designated representative, interruptions to utility services in other than family housing areas, shall occur during a weekend or during other than regular working hours and shall be coordinated with the Contracting Officer or his designated representative.
  - (2) When interruption of utility services is required, either during regular duty hours or non-duty hours, the contractor shall notify the Contracting Officer or his designated representative, in writing, at least fourteen (14) calendar days in advance of the occurrence, describing the circumstances and requesting approval. The contractor shall be required to shut off and restore service unless otherwise directed by the Contracting Officer.

## **20. OPERATION AND MAINTENANCE**

- a. Prior to final acceptance and payment of each Task Order, the Contractor shall submit one (1) complete equipment listing (to include name plate data) and three (3) copies of all operation and maintenance manuals to the Contracting Officer's Representative for all mechanical/electrical systems, electrical controls, etc.

b. Three work days in advance of final acceptance and payment, the contractor shall conduct a training session (one-hour minimum, on site) to brief up to six (6) Government personnel on the operation and maintenance procedures of such systems. The Contractor shall provide three (3) complete tear-down/overhaul/repair manuals and two (2) complete service literature catalogs for the equipment manufacturer's engineered machinery products for the equipment provided, as specified by task order.

## **21. ENVIRONMENTAL PROTECTION**

a. The contractor shall be responsible for the proper removal, handling, and disposal of all solid, liquid, and gaseous contaminants including lead and Freon in accordance with all Federal, state and local regulations and codes in addition to the provisions specified herein.

(1) Freon in existing refrigeration equipment shall be removed by licensed personnel into cylinders and drums approved for recovery in accordance with ARI-88 and Mil Spec BBF-142B. Freon shall not be discharged into the environment. All recovered Freon shall be turned in to the Fort Hood Director of Public Works.

(2) Contractor shall discharge gaseous contaminants so that they will be sufficiently diluted with fresh air to reduce their toxicity to an acceptable level.

(3) Liquid contaminants may, subject to local utility standards, be diluted with water to a level of quality acceptable in the local sewer system, or shall be disposed of in approved vessel at approved sites.

b. All contaminants, scrap and debris resulting from operations under this contract, shall be removed at the end of each working day and hauled off base to a state approved landfill. The Government will provide a disposal site for Class 1, 2, and 3 lead-based paint contaminated material determined to be hazardous as well as asbestos contaminated materials must be disposed of off-post in an approved landfill. Fluorescent light tubes, mercury containing light ballasts, mercury containing thermostats and oxygen depleting substances must be properly packaged and disposed of at the Fort Hood DRMO in accordance with Section, Salvageable and Repairable Materials.

c. Burning of Materials and Debris. No materials or debris shall be burned on Government property.

d. Covered Chutes. All chutes for contaminants, refuse, etc., shall be covered or designed so as to fully confine the material to prevent the dissemination of dust.

e. The Contractor shall coordinate all activities which may require environmental documentation or state environmental permits with the Installation Environmental and Natural Resources office prior to start of work.

## **22. CONSTRUCTION SITE MAINTENANCE**

The Contractor shall store all supplies and equipment at the location designated for the Contractor's Management Office or at a location designated by/coordinated with the Contracting Officer's Representative so as to preclude mechanical and climatic damage. The site shall be maintained in a neat and orderly manner IAW the Installation/Base regulations. Vehicles shall not be parked on grassy areas.

## **23. NOISE CONTROL**

The Contractor shall comply with all applicable federal, state, local, and Installation/Base laws, ordinances, and regulations relative to noise control.

## **24. GOVERNMENT EQUIPMENT ON THE SITE**

The Contractor shall cover equipment that is to remain in place within the area of contract operations and protect it against damage or loss; move and store equipment that is removed in performance of work where directed or reuse in work as required by drawings and specifications. Equipment temporarily removed shall be protected, cleaned and

replaced equal to its condition prior to starting work. Security for equipment or materials that is to be reused and is removed for temporary storage shall be the sole responsibility of the Contractor.

## 25. TOILET FACILITIES

Contractor's personnel will be permitted to use toilet facilities where available and or allowed by Facility User on the premises subject to regulation and control of the Contracting Officer or his designated representative. Contractor personnel shall ensure facility cleanliness is maintained at all times. On those sites where no toilet facilities are available, the Contractor shall provide portable chemical latrines. The cost of these toilets will be negotiated on task orders.

## 26. SAFETY AND HEALTH

a. This section is applicable to all work covered by this contract.

b. Definition of Hazardous Materials: Refer to hazardous and toxic materials/substances included in Subparts H and Z of 29 CFR 1910, and to others as additionally defined in Fed. Std. 313. Those most commonly encountered include asbestos, polychlorinated biphenyls (PCBs), explosives, radioactive material, lead, and lead based paint, but may include others.

c. Asbestos

(1) Asbestos containing material (ACM) demolition may be required under this contract.

(2) THE CONTRACTOR IS WARNED THAT EXPOSURE TO AIRBORNE ASBESTOS HAS BEEN ASSOCIATED WITH FOUR DISEASES: LUNG CANCER, CERTAIN GASTROINTESTINAL CANCERS, PLEURAL OR PERITONEAL MESOTHELIOMA AND ASBESTOSIS. Studies indicate there are significantly increased health dangers to persons exposed to asbestos who smoke, and further, to family members and other persons who become indirectly exposed as a result of the exposed worker bringing asbestos-laden work clothing home to be laundered.

(3) The Contractor is advised that friable and/or nonfriable asbestos-containing material may be encountered in area(s) where contract work is to be performed. Friable asbestos-containing material means any material that contains more than one percent asbestos by weight that hand pressure can crumble, pulverize or reduce to powder when dry. Nonfriable asbestos-containing materials are materials in which asbestos fibers are bound by a matrix material, saturant, impregnant or coating. However, excessive fiber concentrations may be produced during uncontrolled abrading, sanding, drilling, cutting, machining, removal, demolition or other similar activities.

(4) Care shall be taken to avoid releasing, or causing to be released, asbestos fibers into the atmosphere where they may be inhaled or ingested. The Occupational Safety and Health Administration (OSHA) has set standards at 29 CFR 1910.1002 and 29 CFR 1926.58 for exposure to airborne concentrations of asbestos fibers, methods of compliance, medical surveillance, housekeeping procedures and other measures that shall be taken when working with or around asbestos-containing materials. The Environmental Protection Agency (EPA) has established standards at 49 CFR 61.140-156 for the control of asbestos emissions to the environment and the handling and disposal of asbestos wastes.

(5) Use of friable asbestos-containing materials is not permitted by current criteria and shall not be used in new construction or modification projects (ETL 1110-1-118, 27 May 1983). Plans and specifications for all new construction and modification projects will be reviewed to ensure that the use of friable asbestos-containing materials is not specified.

(6) Maintenance, modification, or demolition activities where exposure to asbestos dust may occur from previously installed friable or nonfriable asbestos-containing material shall be identified. All precautions, to include proper work practices, medical surveillance, respiratory protection, industrial hygiene, and environmental protection requirements of OSHA, EPA (40 CFR 61.140-156) and DA Circular 40-83-4, as applicable, shall be strictly adhered to.

d. Lead-Base Paint: The contractor shall report any findings of suspected lead or lead-based paint to the Contracting Officer's Representative before starting work. Lead-based paint removal and disposal may be required under this contract.

## 27. SAFETY ASSURANCE

a. Pre-construction Safety Meeting: Representatives of the Contractor shall meet with the Contracting Officer and/or his representative(s) prior to the start of repair, alteration or construction activities for the purpose of reviewing the Contractor's safety and health programs and discussing implementation of all safety and health provisions pertinent to the work to be performed under the contract.

(1) This meeting may be held in conjunction with the pre-construction conference, if so directed by the Contracting Officer, and/or his/her designated representative. The conduct of this meeting is not contingent upon a general pre-construction meeting. The level of detail for the safety meeting is dependent upon the nature of the work and the potential inherent hazards.

(2) The Contractor's principal on-site representative(s), the general superintendent and his/her safety representative(s) shall attend this meeting. The Contractor shall be prepared to discuss, in detail, the measures he/she intends to take in order to control any unsafe or unhealthy conditions associated with the work to be performed under the contract.

b. Compliance with Regulations: All work, including the handling of hazardous materials or the disturbance or dismantling of structures containing hazardous materials shall comply with Department of Labor, OSHA requirements found in 29 CFR 1910 and 29 CFR 1926, project identified national standards, military manuals, instructions, pamphlets, standards and handbooks, and with USACE Safety Manual EM 385-1-1. All work shall comply with latest revisions of Federal, State and local regulations in force at time of task order award.

c. Work involving the disturbance or dismantling of asbestos, asbestos-containing materials or lead based paint; the demolition of structures containing asbestos or lead based paint; and/or the disposal and removal of asbestos or lead based paint, shall be reported to the Contracting Officer before starting work.

d. Contractor Responsibility:

(1) The Contractor shall assume full responsibility and liability for compliance with all applicable regulations pertaining to the health and safety of personnel during the execution of work, and shall not hold the Government liable for any action on his part or that of his employees or subcontractors, which results in illness, injury or death.

(2) The Contractor shall furnish to the Contracting Officer's Representative a complete accident prevention plan, including a hazard analysis of all operations to be performed by construction trade. The hazard analysis shall be updated/submitted to the Contracting Officer's Representative on an ongoing basis as required prior to start of new work. The accident prevention plan/hazard analysis documentation shall be forwarded to the Contracting Officer's Representative's Installation Occupational Safety and Health Office, for approval prior to start of contractual operations.

(3) All temporary construction electrical systems shall be equipped with ground fault circuit interrupter (GFCI) protection.

(4) Contractor shall have a hearing conservation program in force when the noise level is 85dBA or greater for Contractor/Government personnel.

(5) Contractor shall have a hazardous communication (HAZCOM) program in force and have his personnel trained in the HAZCOM program. Contractor shall maintain up-to-date material safety data sheet (MSDS) files on site in addition to having on site a written copy of the firm's HAZCOM program.

(6) The contractor shall report any accidents and injuries occurring on the Installation/Base to the Contracting Officer within 24 hours. Emergencies, deaths, and major accidents shall be reported to telephone number 911 and the Contracting Officer immediately.

e. Inspections, Tests, and Reports: The required inspections, tests, and reports made by the Contractor, subcontractors, specially trained technicians, equipment manufacturers, and others as required by a task order, shall be furnished in accordance with the terms of the task order.

f. Materials and Equipment: Special facilities, devices, equipment, clothing, and similar items (such as hard hats, breathing apparatus, traffic barriers, etc.) used by the Contractor in the execution of work shall comply with the applicable regulations. Materials and equipment shall be provided at no additional cost to the Government.

g. All companies who conduct business within the state of Texas must, in accordance with Texas Workman Compensation laws (Texas House Bill 62), have an approved company safety policy and an Accident Prevention Plan. The plan, approved by the Texas Workman Compensation Commission (TWCC), shall be submitted For Information Only (FIO) in accordance with SUBMITTAL PROCEDURES. In addition to meeting the TWCC requirements; the plan must also include the requirements of USACE Safety Manual EM 385-1-1.

h. All holes/pits/trenches/manway openings, etc., that are to be left open shall be surrounded with a 48 inch high mesh fence with highly visible orange plastic coating. The fence shall be so anchored as to prevent sagging and located a minimum of 3 feet from the opening so as to prevent an individual, should he fall across the fencing, from falling into the opening. Holes shall also be covered, when not being worked in, with three quarter inch plywood or a metal grating that will prevent small children from entering the hole.

i. Confined Space Entry, reference 29 CFR 1910.146 and all OSHA standards apply to this contract. The Installation/Base Safety Office shall be contacted for any required permits.

j. Radiation Permits and Authorizations: Contractors contemplating the use of devices containing radioactive materials (i.e., soil moisture/density probes) or non-ionizing radiation producing equipment (radio frequency radiation transmitters or lasers) while performing work on this contract shall obtain written authorization/permit from the Installation/Base Radiological Protection Officer (RPO). To obtain the required authorization/permit, contact the RPO. A 45-day lead time shall be anticipated. Without the proper authorization, contractors will not be allowed to bring these devices on base.

## **28. HAZARDOUS MATERIALS**

The Contractor shall provide the Directorate of Public Works (DPW)/Base Civil Engineer (BCW) Environmental Office a list of all hazardous materials, storage, and disposal methods for the wastes generated to the Environmental Office for review and approval prior to use of the materials. The Contractor shall submit spill prevention and contingency plans to the Environmental Office for review and approval prior to start of work. Any costs associated with spill clean up shall be borne by the Contractor.

## **29. PRESERVING HISTORICAL AND ARCHEOLOGICAL FINDS**

The Contractor shall be required to obtain historical and archeological clearance from the Environmental Office prior to conducting any disturbing action in areas where historical and archeological resources exist. This shall include all areas except improved roads, grounds and similar areas. Any failure to do so, which results in damage to cultural resources, may result in claims for costs of mitigating damage being assessed against the Contractor. All construction or alteration work performed on or near historical structures shall comply with the Installation/Base programmatic agreement with there State Historic Preservation Office. Contractor shall provide info and prepare draft applications for Environmental Office submitted to state agencies.

## **30. CONTRACTOR STAFF**

a. The contractor shall be accountable to the Government for conduct of contractor employees and representatives. These individuals shall be subject to the same rules of conduct on the military installation (and at any installation under its cognizance) which apply to Government civilian employees. The Government reserves the right to refuse access to any contractor employee if the Contracting Officer determines such action to be in the best interest of the Government.

b. The contractor shall designate a responsible project management official of the company to represent him in all matters pertaining to work under this contract. That individual shall be available to the Contracting Officer at all times during regular working hours.

- c. The contractor shall employ a competent English-speaking superintendent at the Installation/Base at all times when work is being performed. The superintendent shall devote his/her time exclusively to supervision of work in progress under this contract.
- d. The contractor shall select well-qualified employees to perform work under each task order, provide a qualified English-speaking supervisor to direct work at each work site, and keep employees informed of all improvements, changes, and methods of operations.
- e. When removal of a contractor employee or representative from a facility of the installation or other Government property, becomes necessary due solely to the individual's misconduct or a security violation, the contractor shall take prompt, appropriate action to remove that individual from his staff.

### **31. GOVERNMENT-FURNISHED UTILITIES**

a. The Government will furnish to the Contractor from existing Government facilities and without cost to the Contractor, water, gas, and electrical power supply as set forth below. Contractor shall be "energy conscious" in the use of these Government-Furnished Utilities.

b. Water:

(1) The Government shall furnish from existing Government facilities and without cost to the Contractor, an adequate supply of water necessary for performance under this contract. The Government will in no case furnish or install any required supply connections and piping for the purpose of implementing the availability of the water supply. Contractor shall determine the extent to which existing Government water supply source is adequate for the needs of this contract.

(2) All taps, connections, and accessory equipment required in making the water supply source available shall be accomplished by and at the expense of the Contractor. All work in connection therewith shall be coordinated, scheduled, and performed as directed and approved by the Contracting Officer or Contracting Officer's Representative. Said taps, connections, and accessory equipment shall be maintained by the Contractor in workmanlike manner in accordance with rules and regulations of the Government installation. Upon completion of the contract the removal of all taps, connections and accessories shall be accomplished by and at the expense of the Contractor so as to leave the water supply source or facility in its original condition. Such removal shall also be subject to the direction and approval of the Contracting Officer or Contracting Officer's Representative as provided above.

c. Electricity:

(1) The Government shall furnish at existing Government facilities and without cost to the Contractor, all electrical power necessary for performance under this contract; provided, the Government will in no case furnish or install any electrical facility or accessory for the purpose of implementing the availability of electrical power for the purpose of this contract. The Contractor shall determine the extent to which existing Government electrical facilities are adequate for the needs of this contract.

(2) All taps, connections, and accessory equipment required in making the electrical power available shall be accomplished by and at the expense of the Contractor. All work in connection therewith shall be coordinated, scheduled, and performed as directed and approved by the Contracting Officer or Contracting Officer's Representative. Said taps, connections, and accessory equipment shall be maintained by the Contractor in workmanlike manner in accordance with rules and regulations of the Government installation. Upon completion of the contract or task order the removal of all taps, connections and accessories shall be accomplished by and at the expense of the Contractor so as to leave the electrical power or facility in its original condition. Such removal shall also be subject to the direction and approval of the Contracting Officer or Contracting Officer's Representative as provided above.

d. Telephone Services: Contractor shall obtain telephone service at no cost to the Government.

e. Interruption of Utilities Service: All temporary outages of any utility services required for the performance of work shall be scheduled with the Contracting Officer's Representative no less than 14 days in advance of such

outages; the Contractor may request a waiver from this requirement from the Contracting Officer's Representative when the utility outage will be of a very limited nature (e.g., within a few rooms of a building). If during work performance the Contractor has determined that a utilities related situation involves the risk to life or substantial risk to property, utilities shall be immediately disrupted to reduce the emergency and alleviate risk. If such a risk exists, or if such a disruption does occur, the Contractor shall notify the Contracting Officer's Representative at the earliest practical time, and in no case later than two hours following the occurrence.

f. Excavation and Utility Clearance: (See AVAILABILITY AND USE OF UTILITY SERVICES)

### **32. ADP SUPPORT REQUIREMENTS**

a. The Contractor shall be responsible for obtaining, maintaining, and operating an operational computer system which is compatible with the Government computer systems and networks.

b. The contractor shall be responsible, at his own expense, for obtaining his own automation system consisting of at least two (2) IBM compatible computers. Ownership of this system shall remain with the contractor. Each computer shall be fully capable of running MICROSOFT Windows 2000 operating system and that operating system shall be installed and fully operational upon issuance of notice to proceed for the initial task order issued under this contract. Each computer to be utilized for completion of work under this contract must support network connections via twisted pair cables and appropriate network cards.

c. In addition to other software systems as specified by the Contracting Officer, the contractor's systems shall be fully capable of running the following software applications and upgrades, as they are implemented by the Government, to provide complete compatibility with Government systems.

MICROSOFT PRODUCTS      INTERGRAPH/BENTLEY PRODUCTS

Word 2000

Microstation V

Access 2000

MGE

Powerpoint 2000

Excel 2000

d. Access to the software will be provided via the network to provide assured compatibility between the Contractor and the Government. However, the Contractor is responsible for insuring administrative work to be accomplished under this contract can be accomplished via contractor-furnished software and that contractor-furnished software and that contractor activities can function appropriately for short periods of time without network support. Technical assistance can be arranged through the Contracting Officer with the Government systems support team on a reimbursable basis.

e. Printed communications which can be digitized will primarily be transferred via a local area network (LAN) between the Contracting Officer's Authorized Representative (COR) and Directorate of Public Works (DPW) technical inspection staff. Digitized as-built drawings and backup information can be transferred via 8mm tape cassettes or floppy disks (either 5 1/4" double density or 3 1/2" high density) if the network is not available or if the COR or DPW is not able to accept the data via the LAN.

f. The contractor shall provide its own printer capability for both letter quality text and graphics with at least 300 dpi resolution or better. Capabilities shall support all required reports, forms, and diagrams specified in the contract or as specified by the Contracting Officer or his representative.

g. The Contractor shall provide all required equipment for cabling and hookup of Contractor computer systems to include connection to the Government-furnished LAN.

### **33. FIRE PREVENTION AND PROTECTION**

- a. The Contractor shall comply with all fire prevention measures as set forth by the National Fire Protection Association; other recognized fire prevention agencies; and installation/base regulations (which can be obtained from the Installation/Base Fire Department). Each construction site shall be inspected with a frequency necessary to ensure understanding and compliance on the part of the Contractor with all applicable provisions of the Fire Regulation. Combustible trash shall not be destroyed by open fire at the construction site but shall be removed off post. Approved types of portable fire extinguishers shall be furnished and installed at each construction site by the Contractor. Information concerning approved types is available at the Installation/Base Fire Department. The contractor shall obtain permits for any hot work (welding, etc.) from the Fire Department before commencing work.
- b. The Contractor shall be liable for any fire loss to Government property attributable to negligence on the part of the Contractor, including failure to comply with fire prevention measures prescribed by the terms of this contract.

### **34. CONTRACT VALUE**

#### **a. GUARANTEED MINIMUM**

1. Base Period: The guaranteed minimum for all contracts combined (contingent upon the award of three to five contracts) awarded under this RFP is \$120,000.00.

#### **b. ESTIMATED NOT-TO-EXCEED (NTE) AMOUNT**

The total NTE amount over the life of all combined awarded/active contracts will not exceed \$14,990,000.00.

### **35. DELIVERABLES**

- a. Except as specified or directed otherwise, the contractor shall provide all deliverables, task order work, reports, plans, forms, schedules, etc., to the Contracting Officer promptly within the specified schedules. All plans, schedules, etc., must be reviewed and approved in writing by the Contracting Officer except as specified otherwise herein and as otherwise redelegated by the Contracting Officer.
- b. Existing as-built drawings required for each task order shall be provided (if available) to the contractor in hard copy and/or in format compatible with the automated system in service at the Central Texas Area Office (CTAO). Upon completion of each task order, the contractor shall return updated as-builts to the Government in the same format before final payment is made by the Government.
- c. The contractor shall submit for Government approval a proposal format similar to the CSI format, with other submittals, using automated and hard copy methods. This format will be reviewed by the Government and must be approved by the Contracting Officer prior to its use on a proposal. Proposals for individual task orders shall include all information necessary to completely describe the project.

### **36. PERMITS AND APPROVALS**

- a. The contractor shall, at his own expense, obtain all necessary permits, licenses, and approvals as required by Federal, state, local laws, and installation regulations. This includes, but is not limited to, obtaining approvals from the installation/base fire chief, excavation and utility clearance coordination and digging permits from the PW/BCE, and permits/clearances from the Installation/Base Environmental Management Office.
- b. The Government will not be responsible in any way for damage occasioned by fire, theft, accident, or otherwise to the contractor's (or employees') personal belongings, stored supplies, materials, equipment, supplies, or materials.

### **37. COMMUNICATIONS EQUIPMENT**

The contractor shall provide adequate communications equipment for the performance of this contract. The Project Manager and all Project Engineers shall be accessible to the Contracting Officer around the clock through the use of cellular telephones.

### **38. CERTIFICATES OF COMPLIANCE (SUBMITTALS)**

Any certificates required for demonstrating proof of compliance of materials with specifications requirements shall be executed in six (6) copies. Each certificate shall be signed by an official authorized to certify in behalf of the manufacturing company and shall contain the name and address of the contractor, the project name and location, and the quantity and state or dates of shipment or delivery to which the certificates apply. Copies of laboratory test reports submitted with certificates shall contain the name and address of the testing laboratory and the date or dates of the tests to which the report applies. Certification shall not be construed as relieving the contractor from furnishing satisfactory material, if the material is found not to meet the specific requirement.

### **39. WORK HOURS**

a. Normal working days (except national legal holidays) will be Monday through Thursday, 0630-1700 daily. If the contractor desires to work during other periods than the normal working days, additional Government inspection forces may be required. The Contractor shall make his/her request to the Contracting Officer three calendar days in advance of his/her request to the Contracting Officer three (3) calendar days in advance of his/her intention to work during other periods to allow assignment of additional inspection forces. If such forces are reasonably available, the Contracting Officer may authorize the Contractor to perform work during other than normal duty hours/days. No overtime work will be authorized without specific approval and clearance by the Contracting Officer. Any overtime work not required by the contract or task orders shall be accomplished by the contractor at no additional cost to the Government.

b. The Government will determine if a problem is an emergency, urgent, or routine. The Contractor shall comply with the following response times after being notified that a problem exists:

Emergency - 2 hours (around the clock)

Urgent - 1 work day

Routine - 5 work days

c. The Contractor employees shall not normally be expected to work during Federal holidays. The Government will not pay for services performed on these holidays unless the Contracting Officer's approval has been received in advance of the holiday. The Contractor shall observe the same federal holidays observed by the Government:

New Year's Day

Martin Luther King Jr.'s Birthday

President's Day

Memorial Day

Independence Day

Labor Day

Columbus Day

Veterans' Day

Thanksgiving Day

Christmas Day

other holidays as designated by Executive Order or Public Law

### **40. DEVIATION FROM PROPOSED MANAGEMENT PERSONNEL**

The Contractor shall obtain prior written approval from the Contracting Officer before making any changes in his proposed management staff set forth in his technical proposal.

### **41. CONSTRUCTION SCHEDULES**

a. For each task order the Contractor shall be required to prepare and submit to the Contracting Officer a practicable schedule as outlined in "SCHEDULES FOR CONSTRUCTION CONTRACTS", "PROJECT SCHEDULES NETWORK ANALYSIS SYSTEM)" and PROGRESS SCHEDULE (BAR CHART)." Schedules shall be in bar chart format as described, unless otherwise specified in the task order. Cost for preparing bar charts shall be considered part of the Contractor's labor rates and shall not be separately costed.

b. Critical Path Method (CPM) format schedules, when required shall be provided. Costs for preparing and updating CPM shall be included in the task order.

c. The Contractor shall utilize a computer software program to generate his/her construction schedule. Software program shall include all requirements for "Schedule for Construction Contracts" FAR 52.236-15.

#### **42. PROBLEM REPORTING**

The Contractor shall report to the Contracting Officer Representative (COR) all construction problems or design deficiencies encountered during construction. Report shall include recommended solutions or alternatives. The reporting shall be done on a form provided by the Contractor. This shall be called a Request for Information (or Instruction) (RFI) or whatever title the Contractor desires as long as the form and title is acceptable to the COR.

#### **43. CONSTRUCTION DRAWINGS**

The contractor shall submit all drawings on disk and/or in hard copy, as required in each task order.

#### **44. COMPLETION OF TASK ORDERS**

a. Performance time will be negotiated for each task order considering that all task orders issued will be accomplished and performed concurrently. All payrolls must be submitted to finalize task orders. The contractor shall provide a bar chart schedule, unless otherwise specified, with each proposal which will be revised and resubmitted based upon the negotiated completion date. The bar chart shall be updated weekly for each task order after the Contractor receives the notice to proceed for that task order. Some task orders may require phased completion times. Completion times for individual phases of such task orders will be determined by mutual agreement during project proposal negotiations.

b. The following requirements pertain to timely completion of task orders. The performance period for any task order shall begin as indicated upon the task order. A task order is considered complete upon final acceptance of work completed under that order to include delivery of acceptables, required as-builts, drawings, DD Form 1354, DA Form 2877, O&M training and manuals, and warranty information.

c. The Contractor shall plan, perform, and manage all work so as to comply with specified completion dates without resorting to other task orders and without resorting to other actions which result in additional cost to the government. The following categories shall be used as a basis for estimating completion dates:

- (1) Proper crew sizes and equipment.
- (2) Use of subcontractors.
- (3) Required phasing.
- (4) Concrete curing.
- (5) Government delay of access to work site.
- (6) Testing and evaluation of work site conditions which require extra days.
- (7) Documented unavailability of materials or equipment.
- (8) Full compliance with any applicable law, regulation, or safety requirement which delays time beyond the number of days allowed by other elements.
- (9) Extensive coordination required for use of utilities and digging permits.
- (10) Factors beyond the contractor's control which delays work.
- (11) The need to negotiate a completion time which would appear sooner than normal based on priority and criticality work completion.

#### **45. NOTICE OF COMPLETION OF TASK ORDER**

The Contractor shall notify the Contracting Officer upon completion of each individual task order. The contractor shall give a minimum advance notice of two (2) working days of the date the work will be fully completed and ready for final inspection.

#### **46. COMPLETION INSPECTION**

a. Upon completion of all work, or any increment thereof established by a completion time stated elsewhere in the specifications, the contractor's Quality Control (QC) system manager shall conduct a completion inspection of work and develop a "punch list" of items which do not conform to the approved plans and specifications. Such a list shall be included in the contractor's QC documentation, as required by below and shall include the estimated date by which the deficiencies will be corrected.

b. The contractor's QC system manager or his staff shall conduct a second completion inspection with the COR to ascertain that all deficiencies have been corrected. The completion, inspection, and correction of any deficiencies required by this paragraph shall be accomplished within the time stated for completion of the entire work or any particular increment thereof if the project is divided into increments by separate completion dates. The completion inspection and second inspection shall be performed before projects are turned over.

c. Documentation:

(1) Records: The contractor shall maintain current records of quality control operations, activities, and tests performed including the work of suppliers and subcontractors. These records shall be entered on the Daily Construction Quality Control Report and include a description of trades working on the project, numbers of personnel working, weather conditions encountered, any delays encountered, and acknowledgement of deficiencies noted along with the corrective actions taken on current and previous deficiencies. The contractor shall provide the report and a copy to the Contracting Officer's Authorized Representative (COR). The contractor shall retain a second copy in the contractor's files. These records shall also include factual evidence that require activities or tests to have been performed. This shall consist of, but not be limited to, the following:

- (a) Type and number of control activities and tests involved.
- (b) Results of control activities or tests.
- (c) Nature of defects, cause for rejections, etc.
- (d) Proposed remedial actions.
- (e) Corrective actions taken.

(2) Contents: Quality control records shall cover both conforming and defective or deficient features and shall include a statement that supplies and material incorporated in the work have been inspected and comply with the contract. Two legible copies of these records shall be furnished to the Contracting Officer daily.

d. Notification of Compliance: The Contracting Officer will notify the contractor of any noncompliance with the foregoing requirements. The contractor shall, after receipt of such notice, take immediate corrective action. Any such notification delivered to the contractor or the contractor's representative at the work site shall be deemed sufficient for the purpose of official notification. If the contractor fails or refuses to comply with the request action promptly, the Contracting Officer may issue an order to stop all or part of the work until satisfactory corrective action has been taken. No portion of work time lost as a result of any stop work order shall be made the subject of a claim for extension of time or excess costs or damages by the contractor.

#### **47. MATERIAL APPROVAL SUBMITTALS**

a. Material submittal requirements will be determined during negotiations of individual task orders. Submittals accomplished IAW the clause "Materials and Workmanship" shall be submitted in four copies unless otherwise

specified. Submittals applicable to the entire contract shall be approved by the Contracting Officer prior to start of work on any task order.

b. Certificates which demonstrate proof of compliance of materials with specification requirements shall be executed in four copies. Each certificate shall be signed by an official authorized to certify on behalf of the manufacturing company and shall contain the name and address of the contractor, the project name, location, and the quality and dates of laboratory tests.

c. Where task orders require reports to be submitted with certification, the reports shall contain the name and address of the testing laboratory and the dates of the tests to which the report applies. Certification shall not be construed as relieving the contractor from furnishing satisfactory material that complies with the task order's plans and specifications if, after tests are performed on selected samples, the material is found not to meet the specific requirements.

d. Required tests shall be ordered as required per task order. Where testing samples fail to meet specification requirements, the materials represented by the sample shall be replaced with materials which do meet the specifications. All retesting costs shall be borne by the contractor. Samples shall be clearly identified. The Government reserves the right to sample and test materials for compliance with appropriate specifications. (See Contractor Quality Control System.)

#### **48. SPORADIC WORKLOAD**

The Government's workload (Task Orders issued under this contract) will often be sporadic in nature. Bursts of projects will be given to the Contractor at one time followed by periods (possibly several days, weeks, or months at a time) where no work will be given to the Contractor at all, followed by yet another burst of work. Contractor shall have the management, technical and financial capability to continuously meet the Government's requirements, as stated in this RFP, throughout the sporadic workload periods whenever they occur during the life of the contract. Normally, the Government's heaviest procurement workload is during the 4th quarter of the fiscal year (JULY, AUGUST, & SEPTEMBER).

#### **49. FIRM-FIXED PRICE (FFP) TASK ORDER**

a. A firm-fixed price (FFP) task order provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the task order, except where unit price line items are used in a firm fixed priced task order, which are subject to actual work in place adjustments.

b. The Contractor shall review the scopes of work for completeness/biddability and then provide a proposal for the work. When there exists the need for architect-engineer services associated with the construction, the contractor will develop a work plan as specified by the Government to cover the engineering requirements as well as prepare one proposal to cover the costs of development of the work and the follow-on construction effort. In either case, when preparing the proposal, the contract bid schedule line item disciplines will be used to price labor hours to be performed by the Prime Contractor, with only hours being negotiated. For work that the Prime Contractor intends to subcontract out, competition must be obtained and the most fair and reasonable prices reflected in the Contractor's proposal. The Government shall evaluate the proposal, assures competition is present and sufficient, when required; determines price reasonableness; negotiates with the Contractor, if necessary; and issues the FFP task order.

#### **50. UNDEFINITIZED TASK ORDER (UTO)**

(a) The issuance of UTO's as undefinitized actions will be the exception, rather than the rule, under this contract. A UTO may be issued by the Contracting Officer when work must commence almost immediately and there is insufficient time to fully definitize the price. In these cases, the Government will have, as a minimum, a Scope of Work and an Independent Government Estimate completed. (Otherwise, the action falls under the definition of an Undefinitized Contract Action (UCA) for which the district has no authority to issue without prior approval by higher headquarters.) Task Orders will be issued with a not-to-exceed amount which reflects the most accurate estimate of the work.

(b) For any UTO, the Government will usually obtain a price proposal from the Contractor prior to issuing the task order. In this way, the IGE can be compared with the proposal and a most realistic not-to-exceed limit can be established for obligation under the task order. As in the firm-fixed-price task orders, the contract bid schedule line item disciplines will be used to price labor hours for work to be performed by the prime contractor, with only hours being negotiated. For work that the prime intends to subcontract out, competition shall be obtained and the most fair and reasonable prices reflected in the contractor's proposal. The Government will then evaluate the proposal, assure competition is present and sufficient (when required), determine price reasonableness, negotiate with the contractor if necessary, and take action to issue a modification to the task order to definitize the action. Government will ensure that adequate funds exist prior to issuing the definitization mod.

(c) In those cases where the task order must be issued without the contractor's proposal, the following limitations will apply:

(1) Contractor's proposal shall be submitted to the Government within 30 calendar days after the issuance of the task order by the Contracting Officer; if it is not, Contracting Officer will take action to terminate the task order.

(2) Contractor shall not perform work beyond 50% of the not-to-exceed obligation without having submitted a qualifying proposal to the Government.

(3) The Government may increase the 50% performance limitation stated above in paragraph (c)(2) to 75% when the Contractor submits a qualifying proposal; this increase will be accomplished via a modification (signed by the Contracting Officer) to the task order.

(4) All task orders issued as UTO's shall/will be definitized within 90 calendar days after receipt of the contractor's proposal; any extension of this time must be approved by the Contracting Officer in writing prior to the 90th day; the Area Office will submit the justification for the extension to the Contracting Officer for approval.

**FAILURE TO ADHERE TO THESE TIME CONSTRAINTS WILL RESULT IN THE CONTRACTING OFFICER'S TAKING ACTION TO TERMINATE THE TASK ORDER**

## **51. BONDS**

(a) Bonds listed below are required when the bid amount exceeds \$25,000. The name and business address of the surety shown on the executed bond forms submitted in response to this solicitation must be the same as the name and business address listed for the surety in Department of Treasury Circular 570. Any offeror required to furnish a bond has an option to furnish such bond in the form of a firm commitment with good and sufficient surety or sureties acceptable to the Government, such as Standard Form 24 (for Bid Bond); Standard Form 25 (for Performance Bond); Standard Form 25-A (for Payment Bond); postal money order, certified check, cashier's check, bank draft, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States.

(b) Bid Bonds (Original Bid Bonds, with signatures, must be submitted at the time the price proposal is due). Each offeror shall submit with his offer a Bid Bond on Standard Form 24 with good and sufficient surety or sureties acceptable to the Government, or other security as provided in BID GUARANTEE, in the amount of guarantee minimum.

(c) Performance and Payment Bond. Within ten (10) days after notification of award of the contract, the contractor shall execute and furnish two bonds, each with good and sufficient surety or sureties acceptable to the Government, namely a performance bond and a payment bond. Any bonds furnished shall be furnished by the Contractor to the Government prior to commencement of contract performance. The penal sums of such bonds will be as follows:

(1) Initial Performance Bonds. The penal sum of the performance bond shall equal the amount specified in the Bid Schedule under the CLIN for "Initial Bonding."

(2) Additional Performance Bonds. As allowed by section, ADDITIONAL BOND SECURITY, additional Performance Bonds will be requested by the Contracting Officer in increments as addressed with the Bid Schedule under the CLIN for "Additional Bonding."

(3) Initial Payment Bonds. The penal sum of the payment bond shall equal the amount specified in the Bid Schedule under the CLIN for "Initial Bonding."

(4) Additional Payment Bonds. As allowed by Section, ADDITIONAL BOND SECURITY, additional Payment Bonds will be requested by the Contracting Officer in increments as addressed within the Bid Schedule under CLIN for "Additional Bonding."

NOTE: It is the intent of the Government to have all task orders fully bonded. The Government will award the initial bonding specified in the bid schedule at time of award. When the initial bonding has expired, the Government will use the "Additional Bonding" CLIN as specified in the Bidding Schedule to obtain additional bonding.

(d) Notwithstanding contract clause Section , PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACT, paragraph (g), the Government will not reimburse the Contractor initially for the amount of premiums paid for the Performance and Payment Bonds. This payment will be made upon the issuance of task orders equaling the penal sum of the outstanding bonds. This payment will not exceed the lower of either the offered price for Performance and Payment Bonds or the actual amount paid to the Surety.

FAILURE TO INCLUDE BID BOND OR OTHER BID SECURITY ON TIME MAY BE CAUSE FOR REJECTION OF THE OFFER AS NONRESPONSIVE. LATE BOND OR OTHER SECURITY WILL BE TREATED IN THE SAME MANNER AS PROVIDED IN THIS RFP FOR LATE BIDS. FACSIMILE/ELECTRONIC BONDS ARE NOT ACCEPTABLE.

## Section I - Contract Clauses

## CLAUSES INCORPORATED BY REFERENCE

52.202-1	Definitions	JUL 2004
52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	APR 1984
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	JAN 1997
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity	JAN 1997
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	SEP 2005
52.204-1	Approval of Contract	DEC 1989
52.204-4	Printed or Copied Double-Sided on Recycled Paper	AUG 2000
52.211-13	Time Extensions	SEP 2000
52.211-15	Defense Priority And Allocation Requirements	SEP 1990
52.211-18	Variation in Estimated Quantity	APR 1984
52.215-2	Audit and Records--Negotiation	JUN 1999
52.215-10	Price Reduction for Defective Cost or Pricing Data	OCT 1997
52.215-11	Price Reduction for Defective Cost or Pricing Data--Modifications	OCT 1997
52.215-12	Subcontractor Cost or Pricing Data	OCT 1997
52.215-13	Subcontractor Cost or Pricing Data--Modifications	OCT 1997
52.215-15	Pension Adjustments and Asset Reversions	OCT 2004
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions	JUL 2005
52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data--Modifications	OCT 1997
52.222-7	Withholding of Funds	FEB 1988
52.222-8	Payrolls and Basic Records	FEB 1988
52.222-9	Apprentices and Trainees	JUL 2005
52.222-11	Subcontracts (Labor Standards)	JUL 2005
52.222-12	Contract Termination-Debarment	FEB 1988
52.222-21	Prohibition Of Segregated Facilities	FEB 1999
52.222-26	Equal Opportunity	APR 2002
52.222-27	Affirmative Action Compliance Requirements for Construction	FEB 1999
52.222-35	Equal Opportunity For Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	SEP 2006
52.222-36	Affirmative Action For Workers With Disabilities	JUN 1998
52.222-37	Employment Reports On Special Disabled Veterans, Veterans Of The Vietnam Era, and Other Eligible Veterans	SEP 2006
52.223-14	Toxic Chemical Release Reporting	AUG 2003
52.225-13	Restrictions on Certain Foreign Purchases	FEB 2006
52.227-1	Authorization and Consent	JUL 1995
52.227-2	Notice And Assistance Regarding Patent And Copyright Infringement	AUG 1996
52.228-11	Pledges Of Assets	FEB 1992
52.228-12	Prospective Subcontractor Requests for Bonds	OCT 1995
52.229-3	Federal, State And Local Taxes	APR 2003
52.229-4	Federal, State, And Local Taxes (State and Local Adjustments)	APR 2003
52.232-17	Interest	JUN 1996

52.232-23	Assignment Of Claims	JAN 1986
52.232-33	Payment by Electronic Funds Transfer--Central Contractor Registration	OCT 2003
52.236-2	Differing Site Conditions	APR 1984
52.236-3	Site Investigation and Conditions Affecting the Work	APR 1984
52.236-4	Physical Data	APR 1984
52.236-5	Material and Workmanship	APR 1984
52.236-6	Superintendence by the Contractor	APR 1984
52.236-7	Permits and Responsibilities	NOV 1991
52.236-8	Other Contracts	APR 1984
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	APR 1984
52.236-10	Operations and Storage Areas	APR 1984
52.236-11	Use and Possession Prior to Completion	APR 1984
52.236-12	Cleaning Up	APR 1984
52.236-15	Schedules for Construction Contracts	APR 1984
52.236-17	Layout of Work	APR 1984
52.236-21	Specifications and Drawings for Construction	FEB 1997
52.236-21	Specifications and Drawings for Construction	FEB 1997
52.239-1	Privacy or Security Safeguards	AUG 1996
52.242-13	Bankruptcy	JUL 1995
52.243-4	Changes	AUG 1987
52.244-2	Subcontracts	AUG 1998
52.244-5	Competition In Subcontracting	DEC 1996
52.244-6	Subcontracts for Commercial Items	SEP 2006
52.245-1	Property Records	APR 1984
52.245-2	Government Property (Fixed Price Contracts)	MAY 2004
52.245-3	Identification of Government-Furnished Property	APR 1984
52.245-4	Government-Furnished Property (Short Form)	JUN 2003
52.245-19	Government Property Furnished "As Is"	APR 1984
52.248-3	Value Engineering-Construction	SEP 2006
52.249-1	Termination For Convenience Of The Government (Fixed Price) (Short Form)	APR 1984
52.249-2	Termination For Convenience Of The Government (Fixed- Price)	MAY 2004
52.252-6	Authorized Deviations In Clauses	APR 1984
52.253-1	Computer Generated Forms	JAN 1991
252.201-7000	Contracting Officer's Representative	DEC 1991
252.203-7001	Prohibition On Persons Convicted of Fraud or Other Defense- Contract-Related Felonies	DEC 2004
252.203-7002	Display Of DOD Hotline Poster	DEC 1991
252.204-7003	Control Of Government Personnel Work Product	APR 1992
252.205-7000	Provision Of Information To Cooperative Agreement Holders	DEC 1991
252.209-7004	Subcontracting With Firms That Are Owned or Controlled By The Government of a Terrorist Country	DEC 2006
252.215-7000	Pricing Adjustments	DEC 1991
252.215-7002	Cost Estimating System Requirements	DEC 2006
252.223-7004	Drug Free Work Force	SEP 1988
252.223-7006 Alt I	Prohibition on Storage and Disposal of Toxic and Hazardous Materials (Apr 1993) - Alternate I	NOV 1995
252.225-7016	Restriction On Acquisition Of Ball and Roller Bearings	MAR 2006
252.227-7030	Technical Data--Withholding Of Payment	MAR 2000
252.227-7033	Rights in Shop Drawings	APR 1966
252.231-7000	Supplemental Cost Principles	DEC 1991

252.236-7000	Modification Proposals-Price Breakdown	DEC 1991
252.236-7005	Airfield Safety Precautions	DEC 1991
252.243-7001	Pricing Of Contract Modifications	DEC 1991
252.243-7002	Requests for Equitable Adjustment	MAR 1998
252.245-7001	Reports Of Government Property	MAY 1994
252.247-7024	Notification Of Transportation Of Supplies By Sea	MAR 2000

#### CLAUSES INCORPORATED BY FULL TEXT

#### 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 any kickback. The Contracting Officer may order the 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 this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

#### 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 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 the \$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 officer 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 in 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 in the Excluded Parties List System.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in 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.

(End of clause)

## 52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (SEP 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of \$102.00 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.

(End of clause)

## 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.

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)

## 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 60 days before the contract expires; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 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 60 MONTHS.

(End of clause)

#### 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.

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)

#### 52.222-3 CONVICT LABOR (JUN 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)

52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME  
COMPENSATION. (JUL 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)

52.222-6 DAVIS-BACON ACT (JUL 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 subparagraphs (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)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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	Identification No.
(If none, insert "None")	

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(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)

52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003)

(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)

#### 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 at which 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 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

## 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

(End of clause)

## 52.224-2 PRIVACY ACT (APR 1984)

(a) The Contractor agrees to--

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies--

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c)(1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(End of clause)

## 52.225-9 BUY AMERICAN ACT—CONSTRUCTION MATERIALS (JAN 2005)

(a) Definitions. As used in this clause--

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 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.

Foreign construction material means a construction material other than a domestic construction material.

United States means the 50 States, 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. 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) \1\
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Item 1

Foreign construction material....

Domestic construction material... ..  
 Item 2  
 Foreign construction material.... ..  
 Domestic construction material... ..

-----  
 Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

(End of clause)

52.225-11 BUY AMERICAN ACT--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (NOV 2006)

(a) Definitions. As used in this clause--

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 construction material.

Designated country means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, 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, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) Free Trade Agreement country (Australia, Bahrain, Canada, Chile, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, 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, Costa Rica, Dominica, Dominican Republic, 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 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.

Foreign construction material means a construction material other than a domestic construction material.

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, 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: No known materials.

(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) \1\
Item 1:			
Foreign construction material....			
Domestic construction material...			
Item 2:			
Foreign construction material....			
Domestic construction material...			

\1\ Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

(End of clause)

52.227-4 PATENT INDEMNITY--CONSTRUCTION CONTRACTS (APR 1984)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon 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.

(End of clause)

52.228-1 BID GUARANTEE (SEP 1996)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and

bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.-

(c) The amount of the bid guarantee shall be equal to the guaranteed minimum for the base period (\$120,000.00).

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.-

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(End of clause)

#### 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.

(End of clause)

#### 52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

(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.

(End of clause)

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 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 date 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 at 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 institutions 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 less than \$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 less than \$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 the transferee's sight draft(s) drawn on the 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: \_\_\_\_\_

(End of clause)

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 the 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)

#### 52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (SEP 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 undefinitized work. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized 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.

#### 52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (SEP 2005)

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 use:

(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 (40 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 immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

#### 52.233-1 DISPUTES. (JUL 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) The contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim -

(A) Exceeding \$100,000; or

(B) Regardless of the amount claimed, when using -

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(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 request.

(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.

(End of clause)

#### 52.236-1 PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least **fifty-one (51)** 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.

(End of clause)

#### 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.

(End of clause)

#### 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 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.

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.

(End of clause)