SPECIFICATIONS
(FOR CONSTRUCTION CONTRACT)

Solicitation No. DACW45-03-B-0015

Bank Stabilization
Nishu Point

Garrison Project, Riverdale ND

April 2003

US Army Corps
of Engineers
Omaha District

Bank Stabilization, Nishu Point
Garrison Project, Riverdale, ND

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

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

7. ISSUED BY CODE CT

U S ARMY ENGINEER DISTRICT, OMAHA
106 South 15th Street
Omaha, Nebraska 68102-1618

8. ADDRESS OFFER TO

U.S.ARMY CORPS OF ENGINEERS, OMAHA
Attn: CONTRACTING DIVISION (CENWO-CT)
106 South 15th Street
Omaha, Nebraska 68102-1618

9. FOR INFORMATION CALL: ▶	A. NAME	B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS)
	See SECTION 00100, Para. 25	See SECTION 00100, Para. 25

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):

The Offeror hereby agrees to do all the work described in these documents entitled:

Bank Stabilization, Nishu Point
Garrison Project, Riverdale, ND

RETURN WITH BIDS: SECTION 00010 (SF1442), SECTION 00600 REPRESENTATIONS, CERTIFICATIONS & OTHER STATEMENTS OF BIDDERS, and all Bonding Requirements, See SECTION 00700 CONTRACT CLAUSES and SECTION 00100 for Performance and Payment Bonds.

This project is set-aside under the Historically Underutilized Business Zone (HUBZone) Program. See Section 00100 paragraph 1.2.

11. The Contractor shall begin performance within 10 calendar days and complete it within 120 calendar days after receiving

☐ award, ☒ notice to proceed. This performance period is ☒ mandatory, ☐ negotiable. (See _____ .)

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

13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and 0 copies to perform the work required are due at the place specified in Item 8 by 2:00 pm (hour) local time 16 May 2003 (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 60 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)	15. TELEPHONE NO. (Include area code)
DUNS Number:	16. REMITTANCE ADDRESS (Include only if different than Item 14)
CODE FACILITY CODE	

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within 60 calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)

AMOUNTS ▶ SEE ATTACHED BIDDING SCHEDULE

Contractor's Fax No._____ CAGE CODE _____

Contractor's E-Mail address_____

18. The offeror agrees to furnish any required performance and payment bonds.

19. ACKNOWLEDGMENT OF AMENDMENTS

(The offeror acknowledges receipt of amendments to the solicitation - give number and date of each)

AMENDMENT NO.										
DATE										

20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)	20B. SIGNATURE	20C. OFFER DATE

AWARD (To be completed by Government)

21. ITEMS ACCEPTED:

22. AMOUNT	23. ACCOUNTING AND APPROPRIATION DATA

24. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) ▶	ITEM 26	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO ☐ 10 U.S.C. 2304(c) ( ) ☐ 41 U.S.C. 253(c) ( )

26. ADMINISTERED BY CODE	27. PAYMENT WILL BE MADE BY
U.S. Army Engineer District, Omaha 106 South 15th Street Omaha, Nebraska 68102-1618	USAED Omaha c/o USACE Finance Center 5722 Integrity Drive Millington, TN 38054-5005

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

☐ 28. NEGOTIATED AGREEMENT (contractor is required to sign this document and return_____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.

☐ 29. AWARD (Contractor is not required to sign this document.) Your offer on this solicitation, is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)		31A. NAME OF CONTRACTING OFFICER (Type or print)	
30B. SIGNATURE	30C. DATE	31B. UNITED STATES OF AMERICA BY	31C. AWARD DATE

BIDDING SCHEDULE

Item No.	Description	Estimated Quantity	Unit	Unit Price	Amount
1.	All work complete for Embankment Fill (Compacted) as shown on the drawings and herein	CY	2500	$_____	$_____
2.	All work complete for Geotextile Fabric-Type Sr as shown on the drawings and herein	SY	3600	$_____	$_____
3.	All work complete for Loose Rock Riprap as shown on the drawings and herein	CY	4500	$_____	$_____
4.	All work complete for Haul Road Rehabilitation as shown on the drawings and herein	Mile	6	$_____	$_____
5.	All remaining work not including the items listed above	Job	LS	---	$_____
			TOTAL AMOUNT		$_____

Notes:

1. The quantities for unit priced items are estimated only and the respective unit price will prevail in the event of an overrun or underrun subject to Contract Clauses "Variation in Estimated Quantity."

2. Bid prices must be entered for all items of the schedule. Total amount bids submitted without bid prices being entered on individual items will be rejected. Extensions will be subject to verification by the Government. In case of variation between the unit prices and the extensions, the unit prices will be considered the bid. In case of variation between the individual bid item prices and the total amount, the individual bid prices will be considered the bid.

3. A modification to a bid which provides for a single adjustment to the total amount bid should state the application of the adjustment to each respective unit price and lump sum price affected. If the modification is not so apportioned, the single adjustment will be applied to Item No. 1.

4. Item 1: This item includes all work necessary to construct fill/ embankment for bank stabilization sections and will be measured by the Cubic Yards in place as determined by before/after cross section measurements (average end area). Includes shaping and seeding of borrow area.

5. Item 2: This includes all work for providing and installing geotiextile fabric as shown in the specifications

6. Item 3: This item includes all work for providing and installing riprap as shown in the sketches and specifications.

7. Item 4: This item includes all necessary to return existing haul roads back to original condition or better.

8. Item 5: The work of this item shall include but not be limited to labor, materials, permits, care of water, the work associated and all work incidental to the completion of the required work according to the plans and specifications not covered on the Bidding Schedule in bid items No. 1 thru No. 4.

SECTION 00100

INSTRUCTIONS, CONDITIONS & NOTICES TO BIDDERS
(July 2000, Revised April 2003)

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SECTION 00100

INSTRUCTIONS, CONDITIONS & NOTICES TO BIDDERS

1 GENERAL BIDDING INFORMATION

Bids shall be either mailed or hand-carried as indicated below. Bid will be PUBLICLY opened at the bid time indicated on Standard Form SF 1442 (Page 00010-1).

1.1 MAILED BIDS AND HAND-CARRIED BIDS

Mailed bids shall be addressed to the location as indicated on Standard Form SF 1442 (Page 00010-1), Item No. 8.

Due to heightened security at Government installations, those bidders who have their bids hand-carried* shall contact Neil Herman, Contract Specialist at (402) 221-4119 or (402) 221-4100 prior to delivering to the U. S. Army Corps of Engineer District, Omaha, 106 South 15th Street, Omaha, NE.

On the date specified and for thirty (30) minutes prior to time specified on Standard Form SF 1442, Page 00010-1, item 13.A, a Contracting representative will be in the lobby to receive bids. At the time specified on Standard SF 1442 Page 00010-1, item 13.A, the designated bid opening official will announce that receipt of bids is closed. Official time will be established by time/stamp clock located in the area where bids are received.

Anyone wishing to attend this public opening will be required to present photo identification to sign in and then will be escorted to the facility where bids will be opened. Once bids have been opened, read and recorded, attendees will then be escorted to exit the building.

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

1.2 SOLICITATION RESTRICTIONS

This project is set-aside under the Historically Underutilized Business Zone (HUBZone) Program. To be considered for award, successful bidder must be a certified HUBZone contractor. Status as a qualified HUBZone small business concern is determined by the Small Business Administration (SBA) in accordance with 13 CFR part 126. If the SBA determines that a concern is a qualified HUBZone small business concern, it will issue a certification to that effect and will add the concern to the List of Qualified HUBZone Small Business Concerns on its Internet website at http://www.sba.gov/hubzone.

1.3 BASIS FOR AWARD.

IT IS INTENDED THAT AWARD WILL BE MADE TO ONE BIDDER FOR THE ENTIRE WORK.

1.4 APPROPRIATION AND AUTHORITY

APPROPRIATION: 96 X 3123 Operation and Maintenance General

AUTHORITY: The work provided herein is authorized: by Section 4 of the Flood Control Act (FCA) approved 24 July 1946 (60th Stat. 642) and by

Section 209 of the FCA approved 3 September 1954 and as further amended by Section 209 of the FCA approved 23 October 1962.

1.5 DESCRIPTION OF WORK

The scope of this project is to furnish all plant, labor, materials, and equipment and performing all work for bank stabilization of shoreline to protect a Native American Cemetery. The project is located approximately 10 miles south of Whiteshield, ND. Work consists of: random fill, Geotextile fabric and RipRap. Work shall be in accordance with plans and specifications issued with this solicitation.

1.6 ESTIMATED CONSTRUCTION COST

The estimated construction cost of this project is between $250,000 and $500,000.

2 (FAR 52.214-6) EXPLANATION TO PROSPECTIVE BIDDERS (APRIL 1984).

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

3 RESERVED

(NOTE: FACSIMILE, ELECTRONIC COMMERCE OR TELEGRAPHIC BIDS ARE NOT AUTHORIZED AND WILL NOT BE ACCEPTED. TELEGRAPHIC MODIFICATIONS OR WITHDRAWAL OF BIDS ARE AUTHORIZED. FACSIMILE MODIFICATIONS OR WITHDRAWAL ARE NOT AUTHORIZED.)

4 (FAR 52.214-5) SUBMISSION OF BIDS (MAR 1997).

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) (1) addressed to the office specified in the solicitation and (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a) (1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(d) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

5 (FAR 52.214-18) PREPARATION OF BIDS - CONSTRUCTION (APRIL 1984).

(a) Bids must be--

(1) Submitted on the forms furnished by the Government or on copies of those forms, and
(2) **Manually signed.** The person signing a bid must initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including--

(1) Lump sum bidding;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (1) through (3) above.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.

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

6 (FAR 52.214-4) FALSE STATEMENTS IN BIDS (APRIL 1984).

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(NOTE: FACSIMILE, ELECTRONIC COMMERCE OR TELEGRAPHIC BIDS ARE NOT AUTHORIZED AND WILL NOT BE ACCEPTED. TELEGRAPHIC MODIFICATIONS OR WITHDRAWAL OF BIDS ARE AUTHORIZED. FACSIMILE MODIFICATIONS OR WITHDRAWAL ARE NOT AUTHORIZED.)

7 (FAR 52.214-7) LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (NOV 1999).

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is “late” and will not be considered unless it is received before award

is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and—

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

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

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

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

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

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

8 INFORMATION FOR MODIFYING BIDS.

Bids which have been delivered to the designated bid receiving office may be modified or withdrawn by mail, mailgram, or telegram received at any time before the exact time set for receipt of bids. Modifications or withdrawals sent by mail should be transmitted to the place of bid opening Standard Form SF1442 (Page 00010-1), Item 8. Telephone modifications or withdrawals, other than telecopier, will not be accepted. All bid modifications or withdrawals must be signed by the bidder or its authorized representative. Any questions regarding these procedures should be directed to the Omaha District's Contracting Division at (402) 221-4119. This number should also be used to verify the receipt of messages.

(NOTE: NOT REQUIRED FOR PROJECTS LESS THAN $100,000)

9 BID GUARANTEE.

See Contract Clauses clause FAR 52.228-1, BID GUARANTEE. Bid guarantee MUST be in an original and accompanied by an original power of attorney of the surety. Bidders are reminded that a bid bond is required under the solicitation. Proper bid bonds and documents related to the bid bond are a matter of responsiveness that may not be corrected after bid opening. The Comptroller General of the General Accounting Office has issued a recent

decision that may impact acceptability of bid bonds and related documents. The case, All Seasons Construction, Inc, B-291166.2, December 6, 2002, concluded that, in order for the bid to be responsive, signatures (including mechanically-produced signatures) must be added to powers of attorney **after** generation from a computer printer. It may be found at the GAO website at <<http://www.gao.gov/decisions/bidpro/bidpro.htm>>. Bidders are encouraged to refer to this case for guidance prior to submitting their bids.

(This provision is Not Required for projects less than $100,000. See paragraph: PAYMENT PROTECTION.)

10 PERFORMANCE AND PAYMENT BONDS.

See Contract Clauses clause FAR 52.228-15, PERFORMANCE AND PAYMENT BONDS. To have the bond considered valid, both the bond and the Power of Attorney must be original. Facsimile copies will not be acceptable, and will render the bid invalid, therefore eliminating it from competition.

(NOTE: FOR THE PURPOSES OF THIS SOLICITATION, THE WORD "ITEM" SHALL BE CONSIDERED TO MEAN "SCHEDULE.")

11 (FAR 52.214-19) CONTRACT AWARD - SEALED BIDDING - CONSTRUCTION (AUG 1996).

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation of the bid.

(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work, and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, of it is so unbalanced as to be tantamount to allowing an advance payment.

12 NORTH AMERICAN CLASSIFICATION SYSTEM (NAICS).

In accordance with NAICS Manual, the work in this solicitation is assigned classification code 237990.

13 SMALL BUSINESS SIZE STANDARD.

This solicitation is limited to HUBZone small business concerns, but, for definition purposes, a concern is small if its average annual receipts for

its preceding 3 fiscal years did not exceed $28.5 million. (based on FAR 19.102)

14 CHANGES PRIOR TO OPENING BIDS.

The right is reserved, as the interest of the Government may require, to revise the specifications and/or drawings prior to the date set for opening bids. Such revisions will be announced by an amendment or amendments to this Invitation for Bids. **It shall be the responsibility of the prospective bidder to obtain copies of amendments from the website listed in paragraph: PLAN HOLDER'S LIST below**. The Government may (but not required) send an amendment notification to let prospective bidders know that an amendment has been issued. If the revisions and amendments are of a nature which requires material changes in quantities or prices to be bid, the date set for opening bids may be postponed as necessary, in the opinion of the Commander, to enable bidders to revise their bids. In such cases, the amendment will include an announcement of the new date for opening bids.

15 (FAR 52.214-34) SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)

16 (FAR 52.214-35) SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of provision)

17 (EFARS 52.214-5000) ARITHMETIC DISCREPANCIES.

(a) For the purpose of initial evaluation of bids, the following will be utilized in resolving arithmetic discrepancies found on the face of the bidding schedule as submitted by the bidder:

(1) Obviously misplaced decimal points will be corrected;

(2) In case of discrepancy between unit price and extended price, the unit price will govern;

(3) Apparent errors in extension of unit prices will be corrected;

(4) Apparent errors in addition of lump sum and extended prices will be corrected.

(b) For the purposes of bid evaluation, the Government will proceed on the assumption that the bidder intends his bid to be evaluated on the basis of the unit prices, extensions, and totals arrived at by resolution of arithmetic discrepancies as provided above and the bid will be so reflected on the abstract of bids.

(c) These correction procedures shall not be used to resolve any

ambiguity concerning which bid is low.

18 AVAILABILITY OF SPECIFICATIONS, STANDARDS, AND DESCRIPTIONS.

Specifications, standards, and descriptions cited in this solicitation are available as indicated below:

18.1 (FAR 52.211-2) AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) AND DESCRIPTIONS LISTED IN THE ACQUISITION MANAGEMENT SYSTEMS AND DATA REQUIREMENTS CONTROL LIST, DOD 5010.12-L (DEC 1999).

Copies of specifications, standards, and data item descriptions cited in this solicitation may be obtained—

(a) From the ASSIST database via the Internet at http://assist.daps.mil; or

(b) By submitting a request to the—

Department of Defense Single Stock Point (DoDSSP)
Building 4, Section D
700 Robbins Avenue
Philadelphia, PA 19111-5094
Telephone (215) 697-2667/2179
Facsimile (215) 697-1462.

(End of provision)

18.2 CORPS OF ENGINEERS SPECIFICATIONS.

Corps of Engineers specifications of the CRD-C series may be obtained from the National Institute of Building Sciences Construction Criteria Base (CCB) on CD-ROM. Contact the CCB directly at (202) 289-7800 for an order form or obtain an order form at the following internet address: http://www.ccb.org/ccbsubscribe/Subsmain.asp. There is a regular annual subscription fee to CCB of $700 per year. (Note: This is considered to be the Contractor's responsibility and cost). This will include CCB on CD-ROM or DVD plus unlimited internet access plus access to the new Whole Building Design Guide, now under construction and scheduled for launch in October 2001. Selected Corps of Engineers specifications of CRD-C series are available in Acrobat Reader .pdf file format at the following internet address: http://www.wes.army.mil/SL/MTC/handbook/handbook.htm.

18.3 COMMERCIAL (NON-GOVERNMENT) SPECIFICATIONS, STANDARDS, AND DESCRIPTIONS.

These specifications, standards, and descriptions are not available from Government sources. They may be obtained from the publishers.

19 AVAILABLE PLANT.

Each bidder shall, upon request of the Contracting Officer, furnish a list of the plant available to the bidder and proposed for use on the work.

20 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE.

Whenever a contract or modification of contract price is negotiated, the Contractor's cost proposals for equipment ownership and operating expenses shall be determined in accordance with the requirements of paragraph: EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE, contained in Section: 00800, SPECIAL CONTRACT REQUIREMENTS of the specifications. A copy of EP 1110-1-8 "Construction Equipment Ownership and Operating Expense Schedule" is available for review at the office listed in paragraph: SITE VISIT (CONSTRUCTION) herein or at the following internet address: http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep.htm. (copy also included on CD-ROM issued with this solicitation). .

21 NOTICE REGARDING BUY AMERICAN ACT.

The Buy American Act (41 U.S.C. 10a-10d) generally requires that only domestic construction material be used in the performance of this contract. Exception from the Buy American Act shall be permitted only in the case of nonavailability of domestic construction materials. A bid or proposal offering nondomestic construction material will not be accepted unless specifically approved by the Government. When a bidder or offeror proposes to furnish nondomestic construction material, his bid or proposal must set forth an itemization of the quantity, unit price, and intended use of each item of such nondomestic construction material. When offering nondomestic construction material pursuant to this paragraph, bids or proposals may also offer, at stated prices, any available comparable domestic construction material, so as to avoid the possibility that failure of a nondomestic construction material to be acceptable under this paragraph will cause rejection of the entire bid. All bidders are cautioned that, prior Government conduct notwithstanding, the Contractor's selection of a domestic construction material (as defined in FAR 52.225-5 Buy American Act-Construction Materials) which would require the subsequent selection of a foreign construction material for compatibility is not a justification for waiver of the Buy American Act. It is the Contractor's responsibility to verify, prior to submitting the materials for approval, that each system can be built to meet the contract specifications without the use of foreign construction materials.

22 TAXES - NORTH DAKOTA.

22.1 UNEMPLOYMENT TAX SURCHARGE.

The State of North Dakota has enacted legislation applicable to certain some contractors concerning an unemployment tax surcharge. See the North Dakota Century Code, Section 52-04-06.1, Incremental Bond for Impact Projects. The law provides for an unemployment tax surcharge in addition to regular unemployment tax liability. Bidders should investigate the effect, if any, that this law may have upon their bid prices. Inquiries should be directed to Job Service of North Dakota, Post Office Box 1537, Bismarck, North Dakota 58502. Telephone: (701) 224-3470 (Department of Revenue).

22.2 USE TAX.

Bidders are advised of the possible applicability of North Dakota Use Tax. Government furnished Construction material used by the Contractor may be subject to Use Tax. The value of material furnished is set forth in the SECTION 00800, SPECIAL CONTRACT REQUIREMENTS Clause "Government-Furnished

Property." Specific inquiries as to the applicability of North Dakota Use Tax should be referred to the North Dakota State Tax Commission.

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

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

(b) Contractors interested in inspecting the site of the proposed work should contact: Shannon Jeffers, Garrison Project Office, P.O. Box 517, Riverdale, ND 58565 (701)654-7411 ext 238.

24 BIDDER'S QUESTIONS AND COMMENTS.

Questions and/or comments relative to these bidding documents should be submitted via e-mail or mailed to the address identified in paragraph: AVAILABILITY OF BID RESULTS below. Comments should reach this office no later than 20 calendar days prior to the date set for opening of bids, if feasible, in order that changes, if needed, may be added by amendment. E-mail addresses, FAX numbers, items for question and points of contact are listed below. Phone calls with questions should be made between 8:30 a.m. and 3:30 p.m. (Central Standard Time) Monday through Friday.

Note: A courtesy copy of all questions shall be sent to the Contract Specialist (Contractual Matters Point of Contact), the Program Manager and Specifications Section (Technical Content Points of Contact).

Items for Question	Points of Contact/ Phone numbers/ FAX Numbers	E-mail Addresses
Contractual Matters: Ordering CD-Rom of the plans and specifications (limit One per firm)/ amendments**/ Bid Results (See Paragraph AVAILABILITY OF BID RESULTS, below)/ Receipt of Bids	Neil Herman 402-221-4119 (phone) 402-221-4199 (Fax)	Neil.F.Herman@usace.army.mil
Planholder's List	See paragraph: PLAN HOLDER'S LIST, below.	
Small Business Matters	Hubert Carter 402-221-4110 (phone)	hubert.j.carter@usace.army.mil
Technical Contents Of Plans and Specification	Gary Rubingh 402-221-3056 (phone)	Gerus.M.Rubingh@usace.army.mil
	Or	

	Specifications Section Marylee Stobbe 402-221-4411 (Phone) 402-221-3842 (Fax)	Marylee.F.Stobbe@usace.army.mil
Site Inspection	See Paragraph: SITE VISIT (CONSTRUCTION), above	

**** - The Government may elect to send a notification that an amendment has been posted to the Government's web address. It shall be the Contractor's, Subcontractor's and Supplier's responsibility to check the Government's web address for amendments.**

24.1 PLAN HOLDER'S LIST.

The CD-Rom will provide a list of plan holders that have registered at the time the CD-Rom was created. It is bidder's responsibility to check for any updates to the plan holder's list, which is available at the following web address:

http://ebs-nwo.wes.army.mil/

24.2 AVAILABILITY OF BID RESULTS (Local Clause/Provision)

Bid results will be available after bid opening on the Governent's web address:
http://ebs-nwo.wes.army.mil/. Official bid abstracts will be available and may be requested by sending a self-addressed stamped envelope to: U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO-CT-C (Herman), 106 South 15th Street, Omaha, NE 68102-1618.

25 (FAR 52.233-2) SERVICE OF PROTEST (AUG 1996).

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgement of receipt from District Counsel, 106 South 15th Street, Omaha, Nebraska 68102-1618.

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

26 PRE-AWARD SURVEY INFORMATION (Local Provision) (Sep 93)

In accordance with Paragraph PERFORMANCE AND PAYMENT BONDS, request that the following information be submitted with your bid. This facilitates the award process.

1. Financial
   - Name, address, and fax number of Financial Institution
   - Name and phone number of finance individual (primary and

alternate) to be contacted for information

2. Bonding Information
- Provide the name, address, regular phone number and fax number of your Surety Company.

3. Performance
- Provide three (3) references to be contacted on your company's performance

The following information should be submitted:
Name and Fax number of Owner/User
Project Name, Location, Contract Number, and dollar value
Name and phone number of individuals (primary and alternate) that can verify performance of the project

27 (FAR 52.204-6) DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUNE 1999)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet Information Services.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:

(1) Company name.

(2) Company address.

(3) Company telephone number.

(4) Line of business.

(5) Chief executive officer/key manager.

(6) Date the company was started.

(7) Number of people employed by the company.

(8) Company affiliation.

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet home page at http://www.customerservice@dnb.com. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

(End of provision)

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

The Government contemplates award of a Firm Fixed Price contract resulting from this solicitation.

29 SUBCONTRACTING PLAN/SUBCONTRACTING GOALS REGARDING THE UTILIZATION OF SMALL BUSINESS CONCERNS.

a. Application. This clause applies only to large business concerns submitting bids for services exceeding $500,000 or for construction exceeding $1,000,000.

b. Federal Acquisition Regulations (FAR). Attention is directed to the following FAR provisions contained in this solicitation:

52.219-8, Utilization of Small Business Concerns (Alternate I)

52.219-9, Small Business Subcontracting Plan (Alternate I)

52.219-16, Liquidated Damages - Small Business Subcontracting Plan

52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises

c. Goals. The U.S. Army Corps of Engineers considers the following goals reasonable and achievable for fiscal year 2002 and for the performance of the resultant contract:

(1) 57.2% of planned subcontracting dollars with small business concerns.

(2) 8.9% of planned subcontracting dollars with those small business concerns owned and controlled by socially and economically disadvantaged individuals.

(3) 8.1% of planned subcontracting dollars with those small business concerns owned and controlled by women.

(4) 3.0% of planned subcontracting dollars with those small business concerns owned and controlled by Service-Disabled Veterans.

(5) 3.0% of planned subcontracting dollars with those small business concerns owned and controlled by HubZones.

d. Submission and Review of Subcontracting Plan.

SUBMISSION OF SMALL BUSINESS SUBCONTRACTING PLAN IS NOT APPLICABLE TO SMALL BUSINESSES.

(1) The apparent low bidder must submit a subcontracting plan within five (5) calendar days after bid opening (a longer period maybe granted by the Contracting Officer upon request) within 24 hours after notification by the Government to the Contracting Activity.

(2) Goals included in the subcontracting plan should be at least equal to those indicated above. If lesser goals are proposed, the bidder may be required to substantiate how the proposed plan represents the bidder's best effort to comply with the terms and conditions of the

solicitation. Bidders are highly encouraged to become familiar with the intent of the solicitation provisions and the elements of the subcontracting plan.

(3) The subcontracting plan must contain, as a minimum, the elements set forth in FAR provision 52.219-9. An example subcontracting plan will be furnished to the apparent low bidder (upon request). The example subcontracting plan (if requested) should not be construed as an acceptable subcontracting plan. Any format will be acceptable provided that the plan addresses each element as required by the Federal Acquisition Regulations and its supplements.

(4) Proposed plans will be reviewed by the Government to ensure the plan represents the firm's best efforts to maximize subcontracting opportunities for small, small disadvantaged and women-owned businesses.

(5) Subcontracting plans are required to be approved prior to Contract Award. The approved subcontracting plan (to include goals) will become a material part of the contract.

e. Failing to Submit An Acceptable Subcontracting Plan. An apparent low bidder failing to submit a subcontracting plan which demonstrates a reasonable effort to meet the goals listed above or provide an explanation why lesser goals are proposed (upon request), will be considered as non-responsive and not considered eligible for award of the contract.

f. Questions or Assistance Needed in Developing Subcontracting Plan. For any questions or assistance needed in developing the subcontracting plan, contact the Contract Specialist or District's Deputing for Small Business (See paragraph: BIDDER QUESTIONS AND COMMENTS, Contract Specialist [Bid Results] or the District's Deputy for Small Business [Small Business] or fax your inquiries to 402-221-4199).

30 (DFARS 252.204-7004) REQUIRED CENTRAL CONTRACTOR REGISTRATION (NOV 2001)

(a) Definitions.

As used in this clause--

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

(2) “Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) “Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) “Registered in the CCR database” means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR

database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, 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 confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at http://www.ccr.gov.

(End of clause)

REQUIRED CENTRAL CONTRACTOR REGISTRATION (CCR)

Register Now: Don't wait until you submit an offer on a solicitation. You must be registered to receive the contract award. It can often take 30 days for CCR to process your registration information.

Register One of Three Ways:

Internet: http://www.ccr.gov

Value Added Network (VAN) for EDI users: Contact your VAN for information. If you need to find a VAN look at http://www.acq.osd.mil/ec/ecip/van_list.htm

FAX or Mail: Call (888)227-2423 or (616)961-4725 to receive a registration package. FAX or mail the completed information to the CCR Assistance Center. It can take up to 30 days to process a faxed or mailed package.

CCR Assistance Center
74 Washington Street North, Suite 7
Battle Creek, MI 49017-3084
FAX: (616)961-7243

SECTION 00600
REPRESENTATIONS, CERTIFICATIONS & OTHER STATEMENTS OF BIDDERS

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SECTION 00600
REPRESENTATIONS, CERTIFICATIONS & OTHER STATEMENTS OF BIDDERS

The bidder (offeror) makes the following certification and representations as a part of the bid, shall check the appropriate boxes, fill in the appropriate information, and provide signatures on the attached "Solicitation Form" (00600) pages, and submit with Standard Form 1442 (Section 00010).

1. (FAR 52.203-2) CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985).

(a) The offeror certifies that -

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) the prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a Sealed Bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) no attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory -

(1) is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2)(i) has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above

_____

_____

_____ [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) as an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) as an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

2. (FAR 52.203-11) CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991).

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989, -

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

3. (FAR 52.204-3) TAXPAYER IDENTIFICATION (OCT 1998).

(a) Definitions.

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

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

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

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

(d) Taxpayer Identification Number (TIN).

[ ] TIN: _____.

[ ] TIN has been applied for.

[ ] TIN is not required because:

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

[ ] Offeror is an agency or instrumentality of a foreign government;

[ ] Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

[ ] Sole proprietorship;

[ ] Partnership;

[ ] Corporate entity (not tax-exempt);

[ ] Corporate entity (tax-exempt);

[ ] Government entity (Federal, State, or local);

[ ] Foreign government;

[ ] International organization per 26 CFR 1.6049-4;

[ ] Other _____.

(f) Common parent.

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

[ ] Name and TIN of common parent:

Name _____

TIN _____

(End of provision)

4. (FAR 52.204-5) WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) [MAY 1999]

(a) *Definition*. Women-owned business concern, as used in this provision, means a concern 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 its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Representation. [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219–1, Small Business Program Representations, of this solicitation.]* The offeror represents that it [ ] is a women-owned business concern.
(End of provision)

5. (DFARS 252.204-7001) COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING (AUG 1999).

(a) The offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code entered must be for that name and address. Enter "CAGE" before the number.

(b) If the offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Information Service (DLIS). The Contracting Officer will-

(1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;

(2) Complete section A and forward the form to DLIS; and

(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code.

6. (FAR 52.209-5) CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DEC 2001).

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—
(i) The Offeror and/or any of its Principals—
(A) Are [ ] are not [ ] presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
(B) Have [ ] have not [ ], within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
(C) Are [ ] are not [ ] presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.
(ii) The Offeror has [ ] has not [ ], within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity *(e.*g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject

to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default. (End of Provision)

7. (DFARS 252.209-7001) DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT THAT SUPPORTS TERRORISM (MAR 1998). [For Contracts exceeding $100,000]

(a) Definitions.

As used in this provision-

(1) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A)) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means-

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) Prohibition on award. In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary [or, in the case of a subsidiary, the firm that owns the subsidiary], unless a waiver is granted by the Secretary of Defense.

(c) Disclosure.

The Offeror shall disclose any significant interest the government of each of the following countries has in the Offeror or a subsidiary of the Offeror. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include--

(1) Identification of each government holding a significant interest; and
(2) A description of the significant interest held by each Government.
(End of provision)

8. (FAR 52.211-6) BRAND NAME OR EQUAL (AUG 1999).

(a) If an item in this solicitation is identified as "brand name or equal," the purchase description reflects the characteristics and level of quality that will satisfy the Government's needs. The salient physical, functional, and other characteristics that "equal" products must meet are specified in the solicitation.

(b) To be considered for award, offers of "equal" products, including "equal" products of the brand name manufacturer, must--

(1) Meet the salient physical, functional, and other characteristics specified in the solicitation;

(2) Clearly identify the item by--

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as cuts, illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

(4) Clearly describe any modifications the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate "equal" products on the basis of information by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or securing any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that the product being offered is an "equal" product, the offeror shall provide the brand name product referenced in the solicitation.

9. RESERVED

10. RESERVED

11. (FAR 52.219-1) SMALL BUSINESS PROGRAM REPRESENTATIONS (APR 2002) ALTERNATE I (APR 2002)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is _____ [*insert NAICS code*].

(2) The small business size standard is _____ [*insert size standard*].

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

(b) *Representations*. (1) The offeror represents as part of its offer that it [ ] is, [ ] is not a small

business concern.

(2) [*Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision*.] The offeror represents, for general statistical purposes, that it [ ] is, [ ] is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [*Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision*.] The offeror represents as part of its offer that it [ ] is, [ ] is not a women-owned small business concern.

(4) [*Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision*.] The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.

(5) [*Complete only if the offeror represented itself as aveteran-owned small business concern in paragraph (b)(4) of this provision*.] The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(6) *[Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision*.] The offeror represents, as part of its offer, that—

(i) It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:*_____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(7) [*Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.*] The offeror shall check the category in which its ownership falls:

_____ Black American.
_____ Hispanic American.
_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
_____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea),Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
_____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
_____ Individual/concern, other than one of the preceding.

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

"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 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 concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

"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) *Notice*. (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

12. (FAR 52.219-2) <u>EQUAL LOW BIDS (OCT 1995)</u>

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

_____ _____

_____ _____

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

13. RESERVED

14. (FARS 52.219-19) SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (OCT 2000).

(a) *Definition*. "Emerging small business" as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the North American Industry Classification System (NAICS) code assigned to a contracting opportunity.

(b) (Complete only if Offeror has represented itself under the provision at FAR 52.219-1 as a small business concern under the size standards of this solicitation.) The Offeror [ ] is, [ ] is not an emerging small business.

(c) (Complete only if the Offeror is a small business or an emerging small business, indicating its size range.)

Offeror's number of employees for the past 12 months (check this column if size standard stated in solicitation is expressed in terms of number of employees) or Offeror's average annual gross revenue for the last 3 fiscal years (check this column if size standard stated in solicitation is expressed in terms of annual receipts). (Check one of the following.)

No. of Employees	Average Annual Gross Revenues
_____50 or fewer	_____$1 million or less
_____51 - 100	_____$1,000,001 - $2 million
_____101 - 250	_____$2,000,001 - $3.5 million
_____251 - 500	_____$3,500,001 - $5 million
_____501 - 750	_____$5,000,001 - $10 million
_____751 - 1,000	_____$10,000,001 - $17 million
_____Over 1,000	_____Over $17 million

15. (FARS 52.219-21) SMALL BUSINESS SIZE REPRESENTATION FOR TARGETED INDUSTRY CATEGORIES UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (MAY 1999).

[Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.]

Offeror's number of employees for the past 12 months *[check this column if size standard stated in solicitation is expressed in terms of number of employees]* or Offeror's average annual gross revenue for the last 3 fiscal years [check this column if size standard in solicitation is expressed in terms of annual receipts]. *[Check one of the following.]*

No. of Employees	Average Annual Gross Revenues
_____50 or fewer	_____$1 million or less
_____51 - 100	_____$1,000,001 - $2 million
_____101 - 250	_____$2,000,001 - $3.5 million
_____251 - 500	_____$3,500,001 - $5 million
_____501 - 750	_____$5,000,001 - $10 million
_____751 - 1,000	_____$10,000,001 - $17 million
_____Over 1,000	_____Over $17 million

16. (FAR 52.222-21) CERTIFICATION OF NONSEGREGATED FACILITIES (FEB 1999)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

17. (FAR 52.222-22) PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999).

The offeror represents that—

(a) It [ ] has, [ ] has not participated in a previous contract or subcontract subject the Equal Opportunity clause of this solicitation;

(b) It [ ] has, [ ] has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

18. (FAR 52.223-4) RECOVERED MATERIAL CERTIFICATION (OCT 1997)

As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, by signing this offer, that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by the applicable contract specifications.

(End of provision)

19. (FAR 52.223-13) CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 2000) [For Contracts over $100,000]

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this offer, the offeror certifies that-

(1) As the owner or operator of a facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file, for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject the Form R filing and reporting requirements because each facility is exempt for at least one of the following reasons: (Check each block that is applicable.)

[ ] (i) The facility does not manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

[ ] (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

[ ] (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

[ ] (iv) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

[ ] (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rica, Guam, American Samoa, the United States Virgin Islands, the Norther Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

20. (DFARS 252.225-7031) SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 1992)

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

(1) "Foreign person" means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

(2) "United States person" is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) Certification.

By submitting this offer, the Offeror, if a foreign person, company, company or entity, certifies that it--

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(End of clause)

21. (DFARS 252.247-7022) REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992).

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term "supplies" is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) REPRESENTATION. The Offeror represents that it-

_____ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

_____ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea Clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

SECTION 00700

CONTRACT CLAUSES

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119. DFARS 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)
120. FAR 52.248-3 VALUE ENGINEERING--CONSTRUCTION (FEB 2000) (ALERNATE I (APR 1984)
121. *FAR 52.249-1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (APR 1984) [For Contracts $100,000 or Less]
122. *FAR 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) ALTERNATE I (SEP 1996) [For Contracts Over $100,000]
123. *FAR 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)
124. ENVIRONMENTAL LITIGATION (1974 NOV OCE)
125. EFARS 52.249-5000 BASIS FOR SETTLEMENT OF PROPOSALS
126. INAPPLICABLE PROVISIONS AND CLAUSES (Local Provision). [Applicable only for projects or delivery orders less than $100,000]

SECTION 00700

CONTRACT CLAUSES

1. FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

http://www.arnet.gov/far

(End of clause)

* - CONTRACT CLAUSES THAT MAY BE INCORPORATED BY REFERENCE

2. DFARS 252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) Definition.

"Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

3. *FAR 52.202-1 DEFINITIONS (DEC 2001) ALTERNATE I (MAY 2001)

a) “Agency head” or “head of the agency” means the Secretary (Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.

(b) “Commercial component” means any component that is a commercial item.

(c) “Commercial item” means—

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for—

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. “Minor” modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or

change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services—

(i) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in paragraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) "Component" means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).

(e) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(f) "Nondevelopmental item" means—

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use.

(End of clause)

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

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

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

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

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

(1) To pursue the same remedies as in a breach of the contract; and

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

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

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

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

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

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

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

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

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

(a) Definitions.

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

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

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

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

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

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a

subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

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

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

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

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

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

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

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

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

(4) The Contracting Officer may

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

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

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

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

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

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

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

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

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

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

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

8. DFARS 252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE—CONTRACT-RELATED FELONIES (MARCH 1999)

(a) Definitions.

As used in this clause--

(1) "Arising out of a contract with the "DoD" means any any act in connection with--

(i) Attempting to obtain;

(ii) Obtaining; or

(iii) Performing a contract or first-tier subcontract of any department, or component of the Department of Defense (DoD).

(2) "Conviction of fraud or any other felony," means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) "Date of conviction," means the date judgement was entered against the individual.

(b) Any individual who is convicted after September 29, 1988 of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On board of directors of any DoD Contractor or first-tier subcontractor;

(3) As a consultant to any DoD Contractor or first-tier subcontractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than five years from the date of conviction.

(d) 10 U.S.C. 2408 provides that a defense Contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than $500,000 if convicted of knowingly--

(1) Employing a person under a prohibition in paragraph (b) of this clause;

(2) Allowing such a person to serve on the board of directors of Contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as--

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify--

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C.2408(c), defense contractors and subcontractors may obtain information as to whether a particular has been convicted of fraud or any other felony arising out of a contract with the DoD by contracting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

9. DFARS 252.203-7002 DISPLAY OF DOD HOTLINE POSTER (DEC 1991) (<u>For Military Contracts Exceeding $5,000,000</u>)

(a) The Contractor shall display prominently in common work areas within business segments performing work under Department of Defense (DoD) contracts, DoD Hotline Posters prepared by DoD Office of the Inspector General.

(b) DoD Hotline Posters may be obtained from the DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington DC 22202-2884.

(c) The Contract need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. *FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal Action," as used in this clause, means any of the following Federal actions:

(1) The awarding of any Federal contract.

(2) The making of any Federal grant.

(3) The making of any Federal loan.

(4) The entering into of any cooperative agreement.

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

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

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

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(3) A special Government employee, as defined in section 202, title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal Contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: The awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

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

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(1) A payment of reasonable compensation made to an officer or employee f a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

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

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or

negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

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

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) Disclosure.

(A) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(B) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(C) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding $100,000 under the Federal contract.

(D) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(iv) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(v) Penalties.

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

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

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

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

(a) Definitions. As used in this clause—

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as—

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

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

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

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

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

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as—

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

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

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

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

(End of clause)

13. DFARS 252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the Contractor.

14. *FAR 52.209-6 PROTECTING THE GOVERNMENTS INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of $25,000 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 $25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

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

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.

(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.

15. DFARS 252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of $25,000 with a firm, or a subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(End of clause)

16. *FAR 52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (SEP 1990) [<u>For Military Contract's Only</u>]

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

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

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

Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

18. *FAR 52.214-26 AUDIT AND RECORDS--SEALED BIDDING (OCT 1997)

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

(b) Cost or pricing data. If the Contractor has submitted cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer or authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections related to--

(1) The proposal for the modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the modification; or

(4 Performance of the modification.

(c) Comptroller General. In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause.

(d) Availability. The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data.

19. *FAR 52.214-27 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS--SEALED BIDDING (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1), except that this clause does not apply to any modification if an exception under FAR 15.403-1(b) applies.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because

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

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

(3) Any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

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

(1) the actual subcontract or

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

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

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

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

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

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

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

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

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

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

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

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

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

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

20. *FAR 52.214-28 SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS—SEALED BIDDING (OCT 1997)

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

(1) Become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1); and

(2) Be limited to such modifications.

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

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

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1).

(End of clause)

21. *FAR 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JAN 1999)

(a) *Definition*. "HUBZone small business concern," as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) *Evaluation preference*. (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference;

(ii) Otherwise successful offers from small business concerns;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded (see 25.402 of the Federal Acquisition Regulation (FAR)); and

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) *Waiver of evaluation preference*. A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

[ ] Offeror elects to waive the evaluation preference.

(d) *Agreement*. A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone

small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

22. *FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor ’s compliance with this clause.

(c) *Definitions*. As used in this contract—

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration .

“Service-disabled veteran-owned small business concern ” —

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a 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)

23. *FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002) [<u>When Contracting By Negotiations</u>]

(a) This clause does not apply to small business concerns.

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

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may

include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRONet as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (*e.g.*, PRO-Net), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to

facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business , HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided —

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) *Standard Form 294, Subcontracting Report for Individual Contracts.* This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) *Standard Form 295, Summary Subcontract Report.* This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

24. *FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002) --ALTERNATE I (OCT 2001) [<u>When Contracting By Sealed Bidding</u>]

(a) This clause does not apply to small business concerns.

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

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor

Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRONet as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (*e.g.*, PRO-Net), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not,

why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business , HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided —

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is

supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) *Standard Form 294, Subcontracting Report for Individual Contracts.* This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) *Standard Form 295, Summary Subcontract Report.* This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

25. DFARS 252.219-7009 SECTION 8(a) DIRECT AWARD (MAR 2002) [<u>When Competitive 8(a) Contracting Procedures are used</u>]

(a) This contract is issued as a direct award between the contracting office and the 8(a) Contractor pursuant to the Partnership Agreement dated February 1, 2002, between the Small Business Administration (SBA) and the Department of Defense. Accordingly, the SBA, even if not identified in Section A of this contract, is the prime contractor and retains responsibility for 8(a) certification, for 8(a) eligibility determinations and related issues, and for providing counseling and assistance to the 8(a) Contractor under the 8(a) Program. The cognizant SBA district office is:

[To be completed by the Contracting Officer at the time of award]

(b) The contracting office is responsible for administering the contract and for taking any action on behalf of the Government under the terms and conditions of the contract; provided that the contracting office shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting office also shall coordinate with the SBA prior to processing any novation agreement. The contracting office may assign contract administration functions to a contract administration office.

(c) The 8(a) Contractor agrees that--

(1) It will notify the Contracting Officer, simultaneous with its notification to the SBA (as required by SBA's 8(a) regulations at 13 CFR 124.308), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with Section 407 of Pub. L. 100-656, transfer of

ownership or control shall result in termination of the contract for convenience, unless the SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and

(2) It will not subcontract the performance of any of the requirements of this contract without the prior written approval of the SBA and the Contracting Officer.

(End of clause)

26. *FAR 52.219-14 LIMITATIONS ON SUBCONTRACTING (DEC 1996) [<u>For Small Business Set Aside Only</u>]

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for--

(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) Construction by special trade contractors. The concern will perform at lest 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

27. *FAR 52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)

(a) Failure to make a good faith effort to comply with the subcontracting plan, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled ``Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan., If, at contract completion, or in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled ``Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by a commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from many final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

28. DFARS 252.219-7010 ALTERNATE A (JUN 1998) [When Competitive 8(a) Contracting Procedures are used]

As prescribed in 219.811-3(2), substitute the following paragraph (c) for paragraph (c) of the clause at FAR 52.219-18:

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

29. FAR 52.219-18 NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (JUNE 1999) [When Competitive 8(a) Contracting Procedures are used]

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer--

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d) (1) Agreement. A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term ``United States'' includes its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This subparagraph does not apply in connection with construction or service contracts.

(2) The . . . . . [insert name of SBA's contractor] will notify the U.S. Army Corps of Engineers Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

30. DFARS 252.219-7003 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (APR 1996)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, clause of this contract.

(a) Definitions.

"Historically black colleges and universities," as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority institutions," as used in this clause, means institutions meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1).

(b) Except for company or division-wide commercial products subcontracting plans, the term "small disadvantaged business," when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46-48), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Pub. L. 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded--

(1) Protege firms which are qualified organizations employing the severely handicapped; and

(2) Former protege firms that meet the criteria in Section 831(g)(4) of Pub. L. 101-510.

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

31. DFARS 252.219-7004 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (JUN 1997)

(a) Definition. "Subcontract," as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Offeror's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of Section 834 of Pub. L. 101-189, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of Section 211 of Publ. L. 95-507.

(c) The Contractor shall submit Standard Form 295, Summary Subcontract Report, in accordance with the instructions on the form, except--

(1) One copy of SF 295 and attachments shall be submitted to Director, Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International and Commercial Programs), 3061 Defense Pentagon, Room 2A338, Washington, DC 20301-3061; and

(2) Item 14, Remarks, shall be completed to include semi-annual cumulative--

(1) Small business, small disadvantaged business and women-owned small business goals; and

(2) Small business and small disadvantaged business goals, actual accomplishments, and percentages for each of the two designated industry categories.

(d) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

32. *FAR 52.222-3 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

(a) (1) The worker is paid or is in an approved work training program on a voluntary basis;

(2) Representatives of local union central bodies or similar labor union organizations have been consulted;

(3) 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; and

(4) 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

(b) 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.

33. *FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (SEPT 2000)

(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 exceeding $100,000 and require subcontractors to include these provisions in any 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)

34. *FAR 52.222-6 DAVIS-BACON ACT (FEB 1995)

(a) 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, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. 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 (d) 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. 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. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) (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 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 (b)(2) and (b)(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.

(c) 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.

(d) 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.

35. *FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

36. *FAR 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a coy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify--

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate,

either directly or indirectly, and that no deductions have been made either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor of subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

37. *FAR 52.222-9 APPRENTICES AND TRAINEES (FEB 1988)

(a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will not longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater

than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be inconformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

38. *FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

39. *FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination--Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations ,and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b) (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

40. *FAR 52.222-12 CONTRACT TERMINATION--DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

41. *FAR 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

42. *FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency the U.S. Department of Labor, or the employees of their representatives.

43. *FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

44. *FAR 52.222-26 EQUAL OPPORTUNITY (APR 2002)

(a) *Definition*. "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

(i) Employment;
(ii) Upgrading;
(iii) Demotion;
(iv) Transfer;
(v) Recruitment or recruitment advertising;
(vi) Layoff or termination;
(vii) Rates of pay or other forms of compensation; and
(viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of paragraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

45. *FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)

(a) Definitions.

"Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly Federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means--

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade each such subcontract in excess of $10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative actin obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman

sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by--

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at lest annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Contractor--

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to--

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

46. *FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

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

"All employment openings" means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

"Executive and top management" means any employee—

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

"Other eligible veteran" means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

"Positions that will be filled from within the Contractor's organization" means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Qualified special disabled veteran" means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

"Special disabled veteran" means—

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (*i.e.*, a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

"Veteran of the Vietnam era" means a person who—

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) *General*. (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by

the Contractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) *Listing openings*. (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability*. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) *Postings*. (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) *Noncompliance*. If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) *Subcontracts*. The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of $25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for

noncompliance.
(End of clause)

47. *FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or other forms of compensation and changes in compensation;

(iv) Job assignments, job classifications, orgizational structures, position descriptions, lines of progression, and senority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or priviledge of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

(1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

48. *FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans' Employment Report (VETS-100 Report)".

(c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 andAugust 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior writtenapproval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of $25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

49. *FAR 52.222-38 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (*i.e.*, if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS-100 Report required by that clause.

(End of provision)

50. *FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998) [<u>For Work on Federal Facilities</u>]

(a) Executive Order 12856 of August 3, 1993, 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).

(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

51. *FAR 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

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

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall--within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about--

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.560, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

52. FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (AUG 2000) [For Contracts exceeding $100,000. EPA Designated product (available at http://www.epa.gov/cpg/)]

(a) Definitions. As used in this clause—

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

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material used in contract performance, including, if applicable, the percentage of postconsumer material content; and

(2) Submit this estimate to the Contracting Officer.

(End of clause)

53. *FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 2000) [For Contracts Over $100,000]

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility use in the performance of this contract is exempt from the requirement to file an annual Form R if--

(1) The facility does not manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rica, Guam, American Samoa, the United States Virgin Islands, the Norther Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any one of its owned or operated facilities used in the performance of this contract is no longer exempt-

(1) The Contractor shall notify the Contracting Officer;

and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items, as defined in FAR Part 2, the Contractor shall-

(1) For competitive subcontracts expected to exceed $100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding $100,000 (including all options), the substance of this clause, except this paragraph (e).

54. RESERVED

55. DFARS 252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)

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

(1) "Storage" means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

(2) "Toxic or hazardous materials" means:

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR Part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

56. *FAR 52.225-9 BUY AMERICAN ACT—CONSTRUCTION MATERIALS (MAY 2002) (<u>For Contracts less than $6.481 million</u>)

(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 end product.

"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 and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(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 BuyAmerican Act*. (1)(i) Any Contractor request to

use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;
(B) Unit of measure;
(C) Quantity;
(D) Price;
(E) Time of delivery or availability;
(F) Location of the construction project;
(G) Name and address of the proposed supplier; and
(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List *name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]*
[Include other applicable supporting information.]
[Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

57. *FAR 52.225-10 NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS (MAY 2002) (Applicable with FAR 52.225-9)

(a) *Definitions*. "Construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act—Construction Materials" (Federal Acquisition Regulation (FAR) clause 52.225-9).

(b) *Requests for determinations of inapplicability*. An offeror requesting a determination regarding the

inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers*. (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers*. (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

58. *FAR 52.225-11 BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (JULY 2002) [For Contracts more than $6,481,000] ALTERNATE I (MAY 2002) [For Contracts between $6.481 and 7.304733 Million]

(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 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 componentsmanufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Designated country" means any of the following countries:

Aruba	Kiribati
Austria	Korea, Republic of

Bangladesh	Lesotho
Belgium	Liechtenstein
Benin	Luxembourg
Bhutan	Malawi
Botswana	Maldives
Burkina Faso	Mali
Burundi	Mozambique
Canada	Nepal
Cape Verde	Netherlands
Central African Republic	Niger
Chad	Norway
Comoros	Portugal
Denmark	Rwanda
Djibouti	Sao Tome and Principe
Equatorial Guinea	Sierra Leone
Finland	Singapore
France	Somalia
Gambia	Spain
Germany	Sweden
Greece	Switzerland
Guinea	Tanzania U.R.
Guinea-Bissau	Togo
Haiti	Tuvalu
Hong Kong	Uganda
Iceland	United Kingdom
Ireland	Vanuatu
Israel	Western Samoa
Italy	Yemen
Japan	

"Designated country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a designated 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 designated country into a new and different construction material distinct from the materials from which it was transformed.

"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.

"North American Free Trade Agreement country" means Canada or Mexico.

"North American Free Trade Agreement country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) 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 NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(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 Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country and NAFTA country construction materials.

(2) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

_____

[*Contracting Officer to list applicable excepted materials or indicate "none"*]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American Act*. (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List *name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.] [Include other applicable supporting information.]*
[Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

(End of clause)

Alternate I (May 2002). As prescribed in 25.1102(c)(3), delete the definitions of "North American Free Trade Agreement country" and "North American Free Trade Agreement country construction material" from the definitions in paragraph (a) of the basic clause and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

(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 Trade Agreements Act applies 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.

59. *FAR 52.225-12 NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2002) [Applicable with FAR 52.225-11] ALTERNATE II (MAY 2002) [For Contracts Between 6.481 and 7.344733 Million]

(a) *Definitions.* "Construction material," "designated country construction material," "domestic construction material," "foreign construction material," and "NAFTA country construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act—Construction Materials under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) *Requests for determination of inapplicability*. An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers*. (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers*. (1) When an offer includes foreign construction material, other than designated country or NAFTA country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic,

designated country, or NAFTA country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, designated country, or NAFTA country construction material, and the offeror shall be required to furnish such domestic, designated country, or NAFTA country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

ALTERNATE II (MAY 2002) **[For Contracts between 6.481 and 7.304733 Million]**
As prescribed in 25.1102(d)(3), substitute the following paragraphs (a) and (d) for paragraphs (a) and (d) of the basic provision:

(a) *Definitions*. "Construction material," "designated country construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act—Construction Materials under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).

(d) *Alternate offers*. (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

60. *FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JULY 2000)

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban , and Serbia (excluding the territory of Kosovo).

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

61. *FAR 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUNE 2000)

(a) Definitions. As used in this clause:

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

"Interested party" means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the—

U.S. Department of the Interior
Bureau of Indian Affairs (BIA)
Attn: Chief, Division of Contracting and
Grants Administration
1849 C Street, NW,
MS-2626-MIB
Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.
(ii) The target cost of a cost-plus-incentive-fee prime contract.
(iii) The target cost and ceiling price of a fixed-price incentive prime contract.
(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of Clause)

62. *FAR 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent

(1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or

(2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with

(i) specifications or written provisions forming a part of this contract or

(ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold) however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

63. *FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copy-right infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

64. *FAR 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.

65. DFARS 252.227-7033 RIGHTS IN SHOP DRAWINGS (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail

(i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

66. FAR 52.228-1 BID GUARANTEE (SEP 1996) [NOTE: Not required for projects less than $100,000]

(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 bids.

(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 twenty (20%) of the bid price or Three Million Dollars ($3,000,000), whichever is less.

(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.

67. *FAR 52.228-2 ADDITIONAL BOND SECURITY (OCT 1997)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if--

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government;

(b) Any surety fails to furnish reports on its financial condition as required by the Government;

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting Officer has the right to immediately draw on the ILC.

68. *FAR 52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997) [<u>For</u>

Contracts Exceeding $100,000]

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective

(1) for such period as the laws of the State in which this contract is to be performed prescribe, or

(2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

69. *FAR 52.228-11 PLEDGES OF ASSETS (FEB 1992)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond--

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of--

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide--

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

70. *FAR 52.228-12 PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS (OCT 1995)

In accordance with Section 806(a)(3) of Public Law 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requestor.

71. FAR 52.228-13 ALTERNATIVE PAYMENT PROTECTIONS (JULY 2000) [Applicable only for projects or delivery orders less than $100,000]

(a) The Contractor shall submit one of the following payment protections:

(1) A payment bond.

(2) An irrevocable letter of credit from a federally insured financial institution.

(b) The amount of the payment protection shall be 100 percent of the contract price.

(c) The submission of the payment protection is required within 10 days of contract award.

(d) The payment protection shall provide protection for the full contract performance period plus a one-year period.

(e) Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

(f) When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material that signed the escrow agreement.

72. FAR 52.228-14 IRREVOCABLE LETTER OF CREDIT (DEC 1999)

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and--

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC to cover the entire period of performance or may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal of least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Miller Act, the later of--

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of--

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d) Only federally insured financial institution rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the

ILC had letter of credit business of at least $25 million in the past year, ILCs over $5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least $25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

[Issuing Financial Institution's Letterhead or Name and Address]

Issue Date----------

Irrevocable Letter of Credit No.----------
Account party's name----------
Account party's address----------
For Solicitation No.----------
(For reference only)

TO: [U.S. Government agency]
[U.S. Government agency's address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States $_____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or transferee's sight draft(s) drawn on issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

[Confirming Financial Institution's Letterhead or Name and Address]---

(Date) _____

Our Letter of Credit
Advice Number----------

Beneficiary:----------
[U.S. Government agency]
Issuing Financial Institution:----------
Issuing Financial Institution's LC No.:----------

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [name of issuing financial institution] for drawings of up to United States dollars _____/U.S. $_____ and expiring with our close of business on _____ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

[City, State]

(Date) _____

[Name and address of financial institution]
Pay to the order of----------
[Beneficiary Agency] _____

the sum of United States $ _____
This draft is drawn under----------
Irrevocable Letter of Credit No.----------

[Beneficiary Agency]
By: _____

73. FAR 52.228-15 PERFORMANCE AND PAYMENT BONDS (JULY 2000).

[This provision is Not Required for projects less than $100,000. See Clauses "Alternate Payment Protections" and "Inapplicable Provisions and Clauses".]

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

"Original contract price" means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds*. Unless the resulting contract price is $100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance bonds (Standard Form 25).* The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds (Standard Form 25-A).* The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) *Additional bond protection*. (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) *Furnishing executed bonds*. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) *Surety or other security for bonds*. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register or may be obtained from the:

U.S. Department of Treasury
Financial Management Service
Surety Bond Branch
401 14th Street, NW, 2nd Floor, West Wing
Washington, DC 20227.

(e) *Notice of subcontractor waiver of protection (40 U.S.C. 270b(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)

74. FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 2003) [For Contracts Exceeding $100,000]

(a) As used in this clause--

"All applicable Federal, State, and local taxes and duties," means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is

required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Contract date," means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

75. RESERVED

76. DFARS 252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

When the allowability of costs under this contract is determined in accordance with part 31 of the Federal Acquisition Regulation (FAR) allowability shall also be determined in accordance with part 231 of the DoD FAR Supplement, in effect on the date of this contract.

77. *FAR 52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (SEPT 2002)

(a) Payment of Price. The Government shall pay the Contractor the contract price as provided in this contract.

(b) Progress Payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if--

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Contractor Certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.) I hereby certify, to the best of my knowledge and belief, that--

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)

(Title)

(Date)

(d) Refund of Unearned Amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall--

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until--

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) Retainage. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) Title, Liability, and Reservation of Rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as--

(1) Relieving the Contractor from the sole responsibility for al 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.

78. RESERVED.

79. *FAR 52.232-17 INTEREST (JUN 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

80. *FAR 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

81. *FAR 52.232-27 PROMPT PAY FOR CONSTRUCTION CONTRACTS (FEB 2002)

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 EFTbanking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (*e.g.,* 52.232–38, Submission of Electronic Funds Transfer Information with Offer), contract clause (*e.g.,* 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(xi) Any other information or documentation required by the contract.

(3) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) *Computing penalty amount.* The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date

of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233–1, Disputes.

(5) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(6) *Additional interest penalty.* (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if—

(A) The Government owes an interest penalty of $1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—

(*1*) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(*2*) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(*3*) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible—

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(*2*) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(b) *Contract financing payments.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Subcontract clause requirements.* The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) *Prompt payment for subcontractors.* A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) *Interest for subcontractors.* An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register,** for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) *Subcontractor clause flowdown.* A clause requiring each subcontractor to

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) *Subcontract clause interpretation.* The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that—

(1) *Retainage permitted.* Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) *Withholding permitted.* Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) *Withholding requirements.* Permit such withholding without incurring any obligation to pay a late payment penalty if—

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) *Subcontractor withholding procedures.* If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) *Subcontractor notice.* Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) *Contracting Officer notice.* Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;

(3) *Subcontractor progress payment reduction.* Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;

(4) *Subsequent subcontractor payment.* Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(i) Make such payment within—

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) *Notice to Contracting Officer.* Notify the Contracting Officer upon—

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying—

(A) The amounts withheld under paragraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) *Interest to Government.* Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until—

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

(f) *Third-party deficiency reports*—(1) *Withholding from subcontractor.* If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a ''second-tier subcontractor'') a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), 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 payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

82. *FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER –CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) *Method of payment*. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term ''EFT'' refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information*. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) *Mechanisms for EFT payment*. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment*. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) *Contractor EFT arrangements*. If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) *Liability for uncompleted or erroneous transfers*. (1) If an uncompleted or erroneous transfer occurs because the Government used
the Contractor's EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) *EFT and prompt payment*. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) *EFT and assignment of claims*. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(i) *Liability for change of EFT information by financial agent*. The Government is not liable for errors

resulting from changes to EFT information made by the Contractor's financial agent.

(j) *Payment information*. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.
(End of Clause)

83. DFARS 252.232-7004 DOD PROGRESS PAYMENT RATES (OCT 2001)

(a) If the contractor is a small business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 90 percent.

(b) If the contractor is a small disadvantaged business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 95 percent.
(End of clause)

84. DFARS 252.232-7005 REIMBURSEMENT OF SUBCONTRACTOR ADVANCE PAYMENTS--DOD PILOT MENTOR-PROTEGE PROGRAM (SEP 2001)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a protege firm, pursuant to an approved mentor-protege agreement, provided-

(1) The Contractor's subcontract with the protege firm includes a provision substantially the same as FAR 52.232-12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR Subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if they were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1443, Contractor's Request for Progress Payment, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1443 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.
(End of clause)

85. *FAR 52.233-1 DISPUTES (JULY 2002)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written

assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) Contractors shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding $100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows:

'I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.'

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified if required), or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

86. *FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

87. RESERVED

88. FAR 52.236-2 DIFFERING SITE CONDITIONS (APR 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of

(1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or

(2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required, provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

89. *FAR 52.236-3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to

(1) conditions bearing upon transportation, disposal, handling, and storage of materials;
(2) the availability of labor, water, electric power, and roads;
(3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;
(4) the conformation and conditions of the ground; and
(5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

90. *FAR 52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

91. RESERVED

92. *FAR 52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

93. FAR 52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

94. *FAR 52.236-8 OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

95. *FAR 52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities

(1) at or near the work site, and

(2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refused to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

96. *FAR 52.236-10 OPERATIONS AND STORAGE AREAS (APR 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading

capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

97. *FAR 52.236-11 USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

98. *FAR 52.236-12 CLEANING UP (APR 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

99. *FAR 52.236-13 ACCIDENT PREVENTION-ALTERNATE I (NOV 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will (1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities; (2) avoid interruptions of Government operations and delays in project completion dates; and (3) control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall--

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails

or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontractors.

(f) Before commencing the work, the Contractor shall--

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

100.*FAR 52.236-14 AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

101.FAR 52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

102.*FAR 52.236-17 LAYOUT OF WORK (APR 1984)

The Contractor shall lay out its work from Government-established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

103.FAR 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the Contracting Officer is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail

(1) the proposed fabrication and assembly of structural elements, and

(2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

104. *FAR 52.236-26 PRECONSTRUCTION CONFERENCE (FEB 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

105. DFARS 252.236-7000 MODIFICATION OF PROPOSALS - PRICE BREAKDOWN (DEC 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown--

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for--

(i) Material;

(ii) Labor,

(iii) Equipment;

(iv) Subcontracts; and

(2) Most cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

106. DFARS 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.

107. *FAR 52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

108. *FAR 52.242-14 SUSPENSION OF WORK (APR 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

109. FAR 52.243-4 CHANGES (AUG 1987)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes--

(1) In the specifications (including drawings and designs);

(2) In the method or manner of performance of the work;

(3) In the Government-furnished facilities, equipment, materials, services, or site; or

(4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating

(1) the date, circumstances, and source of the order and

(2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after

(1) receipt of a written change order under paragraph (a) of this clause or

(2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

110. DFARS 252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR Part 31 and DFARS Part 231, in effect on the date of this contract, apply.

111. DFARS 252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b)In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:
I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of may knowledge and belief.

(Official's Name)

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including--

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation; and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to----

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

(End of clause)

112. *FAR 52.244-2 SUBCONTRACTS (AUG 1998)

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

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquistion Regulation (FAR).

"Consent of subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract," means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or sevices for performance of the the prime contract or a subcontract. It includes, but is not limited to purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modification or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that--

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds--

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified theshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other that the Coast Guard and the National Aeronautics and Space Administration, either the the simplified theshold or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

_____

_____

_____

(f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting--

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (c), (d), or (e) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination--

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the acceptability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement by the Government.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which ere evaluated during negotiations:

_____

_____

_____

(End of clause)

113. FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (MAY 2002)

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

"Commercial item" has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (June 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

114. *FAR 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989) [For Government Property over $100,000]

(a) Government-furnished property.

(1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property.

(1) The Contracting Officer may, by written notice,

(i) decrease the Government-furnished property provided or to be provided under this contract, or

(ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any--

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in Government property.

(1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract--

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon--

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the material or its use in contract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) Use of Government property. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) Property Administration.

(1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Risk of loss. Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) Abandonment and restoration of Contractor's premises. Unless otherwise provided herein, the Government--

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the

intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) Overseas contracts. If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

115. *FAR 52.245-4 GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (APR 1984) [For Government Property $100,000 or Less]

(a) The Government shall delivery to the Contractor, at the time and locations stated in this contract, the Government-furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the Changed clause when--

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(b) Title to Government-furnished property shall remain in the Government. The Contractor shall use the Government-furnished property only in connection with this contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Government inspection at all reasonable times, unless the clause at Federal Acquisition Regulation 52.245-1, Property Records, is included in this contract.

(c) Upon delivery of Government-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except--

(1) For reasonable wear and tear;

(2) To the extent property is consumed in performing this contract; or

(3) As otherwise provided for by the provisions of this contract.

(d) Upon completing this contract, the Contractor shall follow the instructions of the Contracting Officer regarding the disposition of all Government-furnished property not consumed in performing this contract or previously delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as directed by the Contracting Officer.

(e) If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

116. *FAR 52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not--

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities,labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may

(1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or

(2) Terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

117. *FAR 52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--

(1) The Contractor's failure to conform to contract requirements; or
(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

118. DFARS 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) Definitions.

As used in this clause--

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) 'Department of Defense" (DOD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime Contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) "Supplies" means all property, except land and interests in lard, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) (1) The Contractor shall use U.S. -flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessel if--

(i) This Contract is a construction contract; or

(ii) The supplies being transported are-

(A) Noncommercial items; or

(B) Commercial items that-

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that--

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher that charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum--

(1) Type, weight, and cube of cargo;

(2) Required shipping date:

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number, and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information--

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of the steamship company.

(f) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief--

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format;

ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL		

(g) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) The Contractor shall include this clause, including this paragraph (h) in all subcontracts under this contract that-

(1) Exceed the simplified acquistion threshold in Part 2 of the Federal Acquisition Regulation; and

(2) Are for a type of supplies described in paragraph (b) (2) of this clause.

119. DFARS 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor--

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) (1) The Contractor shall use U.S. -flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessel if--

(i) This Contract is a construction contract; or

(ii) The supplies being transported are-

(A) Noncommercial items; or

(B) Commercial items that-

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

120. FAR 52.248-3 VALUE ENGINEERING--CONSTRUCTION (FEB 2000) (ALERNATE I (APR 1984)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) of this clause.

(b) Definitions. "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) of this clause).

"Value engineering change proposal (VECP)" means a proposal that--

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change--

(i) In deliverable end item quantities only; or

(ii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in paragraphs (c) (1) through (7) of this clause. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for

(i) the affected portions of the existing contract requirement and

(ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) of this clause.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) Government action.

(1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the

decision. The Government will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applied a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing.

(1) Rates. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by

(i) 45 percent for fixed-price contracts or

(ii) 75 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to--

(i) Accept the VECP;

(ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) Deleted.

(h) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of $50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) of this clause, the Contractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(i) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering--Construction clause of contract - _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of Clause)

121. *FAR 52.249-1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (APR 1984) [For Contracts $100,000 or Less]

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the rights, duties, and obligations of the parties, including

compensation to the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

122. *FAR 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) ALTERNATE I (SEP 1996) [For Contracts Over $100,000]

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government

(i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and

(ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b) (6) of this clause; provided, however, that the Contractor

(i) is not required to extend credit to any purchaser and

(ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1 year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and

acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of the termination, the total (without duplication of any items) of--

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

123. *FAR 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if-

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

(i) acts of God or of the public enemy,

(ii) acts of the Government in either its sovereign or contractual capacity,

(iii) acts of another Contractor in the performance of a contract with the Government,

(iv) fires,

(v) floods,

(vi) epidemics,

(vii) quarantine restrictions,

(viii) strikes,

(ix) freight embargoes,

(x) unusually severe weather, or

(xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligation s of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

124. ENVIRONMENTAL LITIGATION (1974 NOV OCE)

(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.

125. EFARS 52.249-5000 BASIS FOR SETTLEMENT OF PROPOSALS

Actual costs will be used to determine equipment cost for a settlement proposal submitted on the total cost basis under FAR 49.206-2(b). In evaluating a termination settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

(1) Actual costs for each piece of equipment, or groups of similar serial or series equipment, need not be available in the contractor's accounting records to determine total actual equipment costs.

(2) If equipment costs have been allocated to a contract using predetermined rates, those charges will be adjusted to actual costs.

(3) Recorded job costs adjusted for unallowable and unallocable expenses will be used to determine equipment operating expenses.

(4) Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of FAR 31.205-11).

(5) License, taxes, storage and insurance costs are normally recovered as an indirect expense and unless the contractor charges these costs directly to contracts, they will be recovered through the indirect expense rate.

126. INAPPLICABLE PROVISIONS AND CLAUSES (Local Provision). [Applicable only for projects or delivery orders less than $100,000]

This provision applies only to delivery orders and projects less than $100,000.

Pursuant to Pub. L. 103-355, the following provisions and clauses, as noted below, are inapplicable to this contract:

(a) FAR 28.102-3, Miller Act requirements;
(b) Not Used;
(c) FAR 52.203-5, Covenant Against Contingent Fees;
(d) FAR 52.203-6, Restrictions on Subcontractor Sales to the Government;
(e) FAR 52.203-7, Anti-Kickback Procedures;

(f) FAR 52.222-4, Contract Work Hours and Safety Standards Act-Overtime Compensation; and
(g) FAR 52.223-6, Drug-Free Workplace, except for individuals.

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SECTION 00800

SPECIAL CONTRACT REQUIREMENTS
5/00, Rev 11/02

PART 1 GENERAL

Attachments:
General Wage Decision No. ND020015

1.1 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

The Contractor shall commence work under this contract within ten (10) calendar days after the date of receipt by him of Notice to Proceed, prosecute said work diligently, and complete the entire work except seeding ready for use not later than 120 calendar days after receipt of Notice to Proceed. The time stated for completion shall include final cleanup of the premises. (FAR 52.211-10)

1.1.1 Start Work

Evidence that the Contractor has started procurement of materials, preparation and submission of shop drawings, preparation of subcontracts, and other preparatory work will satisfy the requirement that work commence within ten (10) calendar days after receipt of Notice to Proceed. Therefore, work need not be commenced at the construction site within ten (10) calendar days.

1.2 LIQUIDATED DAMAGES-CONSTRUCTION (SEPT 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 $250 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. (FAR 52.211-12)

1.3 EXCEPTION TO COMPLETION TIME AND LIQUIDATED DAMAGES

In case the Contracting Officer determines that seeding, and/or the specified maintenance thereof is not feasible during the construction period, such work will be excepted from the completion time and liquidated damages . This work shall be accomplished during the first seeding, period and the specified maintenance period following the completion date.

1.4 CONTRACT DRAWINGS AND SPECIFICATIONS

1.4.1 SETS FURNISHED

The contractor shall be responsible for making copies of specifications and drawings including amendments. The work shall conform to the drawings, all of which form a part of these specifications. The work shall also

conform to the standard details bound or referenced herein.

1.4.2 NOTIFICATION OF DISCREPANCIES

Dimensions marked on drawings shall be followed in lieu of scale measurements. Enlarged plans and details shall govern where the same work is shown at smaller scales. All scales shown are based on a standard drawing size of 28" x 40". If any other size drawings are furnished or plotted the contractor shall adjust the scales accordingly. The contractor shall also advise his sub-contractors of the above. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

1.4.3 OMISSIONS

Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

1.5 PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractors' information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

a. The indications of physical conditions on the drawings and in the specifications are the result of site investigations.

b. Weather conditions shall have been investigated by the Contractor to satisfy himself as to the hazards likely to arise therefrom. Complete weather records and reports may be obtained from the local U.S. Weather Bureau.

c. Transportation facilities shall have been investigated by the Contractor to satisfy himself as to the existence of access highways and railroad facilities. (FAR 52.236-4)

1.6 PAYMENT

1.6.1 PROMPT PAYMENT ACT

Pay requests authorized in CONTRACT CLAUSES clause: "Payments Under Fixed-Price Construction Contracts", will be paid pursuant to the clause, "Prompt Payment for Construction Contracts". Pay requests will be submitted on ENG Form 93 and 93a, "Payment Estimate-Contract Performance" and "Continuation". All information and substantiation required by the identified contract clauses will be submitted with the ENG Form 93, and the required certification will be included on the last page of the ENG Form 93a, signed by an authorized contractor official and dated when signed. The designated billing office is the Office of the Area Engineer.

1.6.2 PAYMENTS FOR MODIFICATIONS

Payments may be made for cost bearing change orders within the scope of the contract only to the extent funds are authorized in the order on a two-part

modification. Contractor pricing proposed must be submitted at the earliest possible time after the change order is issued, or at a specific time as directed by the Contracting Officer. At the discretion of the Contracting Officer, any and all payments may be withheld on the modification until the Contractor has submitted a qualifying price proposal, in as much detail as required by the Contracting Officer, and the final price has been agreed.

1.6.3 PAYMENT FOR MATERIALS DELIVERED OFFSITE (MAR 1995)

a. Pursuant to FAR clause 52.232-5, Payments Under Fixed Priced Construction Contracts, materials delivered to the contractor at locations other than the site of the work may be taken into consideration in making payments if included in payment estimates and if all the conditions of the General Provisions are fulfilled. Payment for items delivered to locations other than the work site will be limited to: (1) materials required by the technical provisions; or (2) materials that have been fabricated to the point where they are identifiable to an item of work required under this contract.

b. Such payment will be made only after receipt of paid or receipted invoices or invoices with canceled check showing title to the items in the prime contractor and including the value of material and labor incorporated into the item. Payment for materials delivered off-site includes petroleum products. (List additional items for which payments will be made for off-site delivery.) (EFAR 52.232-5000)

1.7 DAMAGE TO WORK

The responsibility for damage to any part of the permanent work shall be as set forth in the CONTRACT CLAUSES clause: "Permits and Responsibilities." However, if, in the judgment of the Contracting Officer, any part of the permanent work performed by the Contractor is damaged by flood or earthquake, which damage is not due to the failure of the Contractor to take reasonable precautions or to exercise sound engineering and construction practices in the conduct of the work, the Contractor will make the repairs as ordered by the Contracting Officer and full compensation for such repairs will be made at the applicable contract unit or lump sum prices as fixed and established in the contract. If, in the opinion of the Contracting Officer, there are no contract unit or lump sum prices applicable to any part of such work an equitable adjustment pursuant to CONTRACT CLAUSES clause: "Changes," of the contract will be made as full compensation for the repairs of that part of the permanent work for which there are no applicable contract unit or lump sum prices. Except as herein provided, damage to all work (including temporary construction), utilities, materials, equipment and plant shall be repaired to the satisfaction of the Contracting Officer at the Contractor's expense, regardless of the cause of such damage.

1.8 AVAILABILITY AND USE OF UTILITY SERVICES

Use of public and private utilities will be as found available. The Contractor shall make his own arrangements for use of public and private utilities.

1.9 QUANTITY SURVEYS (APR 1984)

a. Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed

and the actual construction completed and in place.

b. The Contractor shall conduct the original and final surveys and surveys for any periods for which progress payments are requested. All these surveys shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance. The Government shall make such computations as are necessary to determine the quantities of work performed or finally in place. The Contractor shall make the computations based on the surveys for any periods for which progress payments are requested.

c. Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer. (FAR 52.236.16)

1.10 TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER

a. This clause specifies the procedure for the determination of time extensions for unusually severe weather in accordance with the contract clause entitled "Default: (Fixed-Price Construction)." In order for the Contracting Officer to award a time extension under this clause, the following conditions must be satisfied:

(1) The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.

(2) The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the contractor.

b. The 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
(26)	(20)	(15)	(04)	(05)	(07)	(04)	(04)	(04)	(21)	(11)	(22)

c. Upon acknowledgment of the Notice to Proceed (NTP) and continuing throughout the contract, the contractor will record on the daily CQC report, the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical activities for 50 percent or more of the contractor's scheduled work day. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in

paragraph b. above, the contracting officer will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and issue a modification in accordance with the contract clause entitled "Default (Fixed Price Construction)". (ER 415-1-15)

1.11 INSURANCE REQUIRED

In accordance with CONTRACT CLAUSES clause: "Insurance Work on a Government Installation," the Contractor shall procure the following minimum insurance:

Type	Amount
Workmen's Compensation and Employer's Liability Insurance	$100,000
General Liability Insurance	$500,000 per occurrence
Automobile Liability Insurance	
Bodily injury	$200,000 per person and $500,000 per occurrence
Property damage	$ 20,000 per occurrence

(Coverages per FAR 28.307-2)

1.12 SECURITY REQUIREMENTS

The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon release of any employees. When the contract involves work in restricted security areas, only employees who are U.S. citizens will be permitted to enter. Proof of U.S. citizenship is required prior to entry. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project. (Based on FAR 52.204-2)

1.13 CONTRACTOR QUALITY CONTROL (CQC)

See Section 01451A Contractor Quality Control.

1.14 NONDOMESTIC CONSTRUCTION MATERIALS

The List of nondomestic construction materials or their components included in the list set forth in paragraph 25.104 of the Federal Acquisition Regulation does not apply to the requirements of the contract clause entitled "Buy American Act Construction Materials".

1.15 DAILY WORK SCHEDULES

In order to closely coordinate work under this contract, the Contractor shall prepare a written agenda/meeting minutes and attend a weekly coordination meeting with the Contracting Officer and Using Service at which time the Contractor shall submit for coordination and approval, his proposed daily work schedule for the next two week period. The Contractor shall provide a copy of modifications (MODs), Serial Letters, Requests for Information (RFIs)and any other innformation that is needed in the minutes of the meeting. Required temporary utility services, time and duration of interruptions, and protection of adjoining areas shall be included with the

Contractor's proposed 2-week work schedule. At this meeting, the Contractor shall also submit his schedule of proposed dates and times of all preparatory inspections to be performed during the next 2 weeks. Coordination action by the Contracting Officer relative to these schedules will be accomplished during these weekly meetings. Daily reports shall be completed and given to the Contracting Officer or Representative within 24 hours of work

1.16 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE (MAR 1995)

a. This statement shall become operative only for negotiated contracts where cost or pricing data is requested, and for modifications to sealed bid or negotiated contracts where cost or pricing data is requested. This clause does not apply to terminations. See 52.249-5000, Basis for settlement of proposals and FAR Part 49.

b. Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a Contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the Contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series of equipment from the Contractor's accounting records, costs for that equipment shall be based upon the applicable provisions of EP 1110-1-8, "Construction Equipment Ownership and Operating Expense Schedule," Region IV. Copies of each regional schedule may be obtained through the following internet site: http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep.htm. Working conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the Contracting Officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be developed using the formula provided in the schedule. For forward pricing, the Schedule in effect at the time of negotiations shall apply. For retrospective pricing, the Schedule in effect at the time the work was performed shall apply.

c. Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36. Rates for equipment rented from an organization under common control, lease-purchase arrangements, and sale-leaseback arrangements will be determined using the schedule, except that actual rates will be used for equipment leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees.

d. When actual equipment costs are proposed and the total amount of the pricing action exceeds the small purchase threshold, the contracting officer shall request the contractor to submit either certified cost or pricing data, or partial/limited data as appropriate. The data shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet. (EFARS 52.231-5000)

1.17 PERFORMANCE OF WORK BY CONTRACTOR (APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least twenty (20) percentof 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. (FAR 52.236-1)

1.18 PROFIT

a. Weighted guidelines method of determining profit shall be used on any equitable adjustment change order or modification issued under this contract. The profit factors shall be as follows:

Factor	Rate	Weight	Value
Degree of Risk	20	See Item	
Relative difficulty of work	15	b. below	
Size of Job	15		
Period of performance	15		
Contractor's investment	5		
Assistance by Government	5		
Subcontracting	25		
	100		

b. Based on the circumstances of each procurement action, each of the above factors shall be weighted from .03 to .12 as indicated below. The value shall be obtained by multiplying the rate by the weight. The value column when totalled indicates the fair and reasonable profit percentage under the circumstances of the particular procurement.

(1) Degree of Risk. Where the work involves no risk or the degree of risk is very small, the weighting should be .03; as the degree of risk increases, the weighting should be increased up to a maximum of .12. Lump sum items will have, generally, a higher weighted value than the unit price items for which quantities are provided. Other things to consider: the portion of the work to be done by subcontractors, nature of work, where work is to be performed, reasonableness of negotiated costs, amount of labor included in costs, and whether the negotiation is before or after performance of work.

(2) Relative Difficulty of Work. If the work is most difficult and complex, the weighting should be .12 and should be proportionately reduced to .03 on the simplest of jobs. This factor is tied in to some extent with the degree of risk. Some things to consider: the nature of the work, by whom it is to be done, where, and what is the time schedule.

(3) Size of Job. All work not in excess of $100,000 shall be weighted at .12. Work estimated between $100,000 and $5,000,000 shall be proportionately weighted from .12 to .05.

(4) Periods of Performance. Jobs in excess of 24 months are to be weighted at .12. Jobs of lesser duration are to be proportionately weighted to a minimum of .03 for jobs not to exceed 30 days. No weight where additional time not required.

(5) Contractor's Investment. To be weighted from .03 to .12 on the basis of below average, average, and above average. Things to consider: amount of subcontracting, mobilization payment item, Government furnished

property, equipment and facilities, and expediting assistance.

(6) Assistance by Government. To be weighted from .12 to .03 on the basis of average to above average. Things to consider: use of Government-owned property, equipment and facilities, and expediting assistance.

(7) Subcontracting. To be weighted inversely proportional to the amount of subcontracting. Where 80 percent or more of the work is to be subcontracted, the weighting is to be .03 and such weighting proportionately increased to .12 where all the work is performed by the Contractor's own forces.

1.19 LABOR CONDITIONS APPLICABLE TO TEMPORARY FACILITIES

It is the position of the Department of Defense that the Davis-Bacon Act, 40 U.S.C. 276a is applicable to temporary facilities such as batch plants, sandpits, rock quarries, and similar operations, located off the immediate site of the construction but set up exclusively to furnish required materials for a construction project on the site of the work. Clause "Payrolls and Basic Records" of the CONTRACT CLAUSES is applicable to such operations.

1.20 DRAWING SCALES

All scales shown are based on a standard drawing size of 28" x 40" . If any other size drawings are furnished or plotted, the contractor shall adjust the scales accordingly. The Contractor shall also advise his sub-contractors of the above.

1.21 (FAR 52.219-6)NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JUL 1996)

(a) Definition. "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) General. (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(1) Any award resulting from this solicitation will be made to a small business concern.

(c) Agreement. A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply in connection with construction or service contracts.

(End of clause) FAR 52.219-6

1.22 WAGE RATE APPLICATION

For copies of Wage Rates, See Attachment GENERAL WAGE DECISIONS. Applicable to all work.

1.23 (FAR 52.222-23) NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for Minority Participation for Each Trade	Goals for Female Participation for Each Trade
4.4	6.9

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs Office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the -

(1) Name, address, and telephone number of the subcontractor;

(2) Employer identification number of the subcontractor;

(3) Estimated dollar amount of the subcontract;

(4) Estimated starting and completion dates of the subcontract; and

(5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is Minot EA-152, which McLean county is a part of.

1.24 (EFARS 52.236-5000) PLANT AND MATERIAL REMOVAL AFTER CONTRACT TERMINATION(MAR 1995)

Should this contract be terminated as provided in clause 52.232-5001 because of the failure of Congress to provide additional funds for its completion, the contractor may be permitted to remove plant and material on which payments for preparatory work have been made, subject to an equitable deduction from the amounts due the contractor to reimburse the United States for the unabsorbed value of such plant and material.

1.25 FEDERAL HOLIDAYS

The following Federal legal holidays are observed by this installation:

New Year's Day	1 January
Martin Luther King's Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	4 July
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veterans Day	11 November
Thanksgiving Day	Fourth Thursday in November
Christmas Day	25 December

If a wage determination applies the number of holidays specified on it, it has priority over this clause.

PART 2 NOT USED

PART 3 NOT USED

-- End of Section --

GENERAL DECISION ND020015 01/03/03 ND15

General Decision Number ND020015

Superseded General Decision No. ND010015

State: North Dakota

Construction Type:
HEAVY

County(ies):

ADAMS	HETTINGER	RICHLAND
BARNES	KIDDER	ROLETTE
BENSON	LA MOURE	SARGENT
BILLINGS	LOGAN	SHERIDAN
BOTTINEAU	MCHENRY	SIOUX
BOWMAN	MCINTOSH	SLOPE
BURKE	MCKENZIE	STARK
CAVALIER	MCLEAN	STEELE
DICKEY	MERCER	STUTSMAN
DIVIDE	MOUNTRAIL	TOWNER
DUNN	NELSON	TRAILL
EDDY	OLIVER	WALSH
EMMONS	PEMBINA	WARD
FOSTER	PIERCE	WELLS
GOLDEN VALLEY	RAMSEY	WILLIAMS
GRANT	RANSOM	
GRIGGS	RENVILLE	

HEAVY CONSTRUCTION PROJECTS (including Sewer & Water Line Construction & Drainage Projects and Excluding Industrial and Processing Plants and Refineries)

Modification Number	Publication Date
0	03/01/2002
1	04/19/2002
2	06/07/2002
3	11/01/2002
4	01/03/2003

COUNTY(ies):

ADAMS	HETTINGER	RICHLAND
BARNES	KIDDER	ROLETTE
BENSON	LA MOURE	SARGENT
BILLINGS	LOGAN	SHERIDAN
BOTTINEAU	MCHENRY	SIOUX
BOWMAN	MCINTOSH	SLOPE
BURKE	MCKENZIE	STARK
CAVALIER	MCLEAN	STEELE
DICKEY	MERCER	STUTSMAN
DIVIDE	MOUNTRAIL	TOWNER
DUNN	NELSON	TRAILL
EDDY	OLIVER	WALSH
EMMONS	PEMBINA	WARD
FOSTER	PIERCE	WELLS
GOLDEN VALLEY	RAMSEY	WILLIAMS

GRANT RANSOM
GRIGGS RENVILLE

ELEC0714J 01/01/2001

	Rates	Fringes
ADAMS, BILLINGS, BOTTINEAU, BOWMAN, BURKE, DIVIDE, DUNN, EMMONS, GOLDEN VALLEY, GRANT, HETTINGER, MCHENRY, MCKENZIE, MCLEAN, MERCER, MOUNTRIAL, OLIVER, PIERCE, RENVILLE, ROLLETTE, SHERIDAN, SOIUX, SLOPE, STARK, WARD, & WILLIAMS COUNTIES:		
ELECTRICIANS:		
ELECTRICIAN	23.45	10.5%+a
CABLE SPLICER	23.85	10.5%+a

FOOTNOTE;
a. $5.20 per hour.

ELEC1426P 06/01/2002

	Rates	Fringes
BARNES, BENSON, CAVALIER, DICKEY, EDDY, FOSTER, GRIGGS, KIDDER, LAMOURE, LOGAN, MCINTOSH, NELSON, PEMBINA, RAMSEY, RANSOM, RICHLAND, SARGENT, STEELE, STUTSMAN, TOWNER, TRAILL, WALSH, & WELLS COUNTIES:		
ELECTRICIANS:		
ELECTRICIAN	21.47	5.20+12%
CABLE SPLICER	22.54	5.20+12%

ENGI9949B 11/01/2002

	Rates	Fringes
GROUP 1	17.85	6.85
GROUP 2	17.70	6.85
GROUP 3	17.45	6.85
GROUP 4	17.30	6.85
GROUP 5	15.15	6.85

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1:
All Terrain Vechicle Cranes 80 tons and over,Hydro Cranes, 80 tons and over, Crane Operator with 135' boom and over Gantry Crane Operator, & Travelling Tower Crane.

GROUP 2:

All Terrain Vechicle Cranes over 20 tons and up to 80 tons, Hydro Cranes 20 tons up to 80 tons,Creter Crane, & Crane Operator up to 135' Boom.

GROUP 3:
All Terrain Vehicle Cranes thru 20 tons, Hydro Cranes thru

20 tons, Tractor with boom attachment

GROUP 4:
Push Tractor Roller
GRoup 5:
Tractor pulling Compaction or Areating Equipment

SUND2009A 05/04/2000

	Rates	Fringes
CONCRETE FINISHER/CEMENT MASON	14.37	3.67
CARPENTER(Including Form building & Concrete Forms)	13.98	
IRONWORKER REINFORCING	17.03	
LABORERS:		
Common	9.96	
Pipelayers	10.48	
PAINTERS,BRUSH,SPRAY	18.14	
POWER EQUIPMENT OPERATORS:		
Backhoes	14.00	3.74
Bobcat	12.82	2.35
Bulldozer	14.06	4.00
Excavator	12.05	
Front End Loader	13.15	3.17
Mechanic	15.16	5.31
Motor Grader	14.74	4.51
Scraper	13.85	4.25
Sheepsfoot	12.57	3.23
Skidster	11.06	2.05
Self Propelled Packer	11.55	4.25
TRUCK DRIVERS:		
Dump	11.39	3.60
Semi	11.52	.23
Tandem	11.14	1.63

TEAM0082E 11/01/2002

	Rates	Fringes
ARTICULATED OFF ROAD HAULER	16.10	6.00

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

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

Administrative Review Board
U. S. Department of Labor

200 Constitution Avenue, N. W.
Washington, D. C. 20210

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

END OF GENERAL DECISION

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DIVISION 01 - GENERAL REQUIREMENTS

SECTION 01200

CONSTRUCTION GENERAL

5/00; Rev 01/02

PART 1 GENERAL

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1.3 PROTECTION OF EXISTING FACILITIES AND WORKS
1.3.1 Flood Protection Works
1.4 CARE OF WATER
1.5 DISPOSITION OF CONSTRUCTION FACILITIES
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1.6.1 Access Roads
1.7 SUBMITTALS
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1.10 PORTABLE TOILETS

PART 2 NOT USED

PART 3 NOT USED

-- End of Section Table of Contents --

SECTION 01200

CONSTRUCTION GENERAL
5/00; Rev 01/02

PART 1 GENERAL

1.1 SCOPE

The work covered in this section is outlined as a statement of construction requirements common to all the work. Specific requirements for materials and installations are provided under the Technical Sections herewith. No claims for extras shall be made on account of items presumed to have been omitted from this section.

1.2 CONSTRUCTION RIGHT-OF-WAY

The Contractor will be assigned working areas or working right-of-way limits for use in the prosecution of work under this contract, subject to the CONTRACT CLAUSES clause entitled "Operations and Storage Areas."

1.3 PROTECTION OF EXISTING FACILITIES AND WORKS

The Contractor shall be responsible for the protection of the work area from damage and upon completion of the work shall leave existing works in a condition equal to that which existed when the work started. All work, storage of materials, and construction plant shall be kept within the limits of the areas assigned. Prior to construction operations, the Contractor shall confer with the Contracting Officer's representative to determine the proximity of any possible under-ground obstructions, pipe or equipment which could be damaged as a result of construction operations. Existing utility lines that are shown on the drawings or the locations are otherwise made known to the Contractor shall be protected from damage, and if damaged, shall be repaired by the Contractor at no additional expense to the Government. In the event that the Contractor damages any existing utility lines that are not shown or the locations of which have not been made known to the Contractor, report thereof shall be made immediately to the Contracting Officer. If the Contracting Officer determines that repairs shall be made by the Contractor, such repairs will be ordered under CONTRACT CLAUSES clause entitled "Changes." The Contractor will be responsible for the protection of structures from any structural damage during the construction operations. Roads and surfaces shall be protected from damage by the work or if damaged shall be repaired with equal materials at no additional expense to the Government. At all times the plant and work areas shall be kept in a condition conducive to safety of workmen and the public and neat in appearance. Waste or surplus materials shall not be allowed to accumulate in the construction areas.

1.3.1 Flood Protection Works

In all cases where materials in the existing flood protection works are used or connected with the construction of new work under this contract, the work shall be so planned and executed that the new work shall be completed to provide protection equivalent to the existing protection as the existing protection is weakened or removed. These operating

restrictions shall be followed in order that the new work may be tied in, or connected promptly, by the Contractor, with the existing facilities so as to furnish a continuous service in an emergency. These ties or connections shall be made during periods of suspended construction operations and the Contractor shall leave incompleted pipe outlets and other structures in such conditions as to not interfere with the natural drainage from areas served by these pipes or structures.

1.4 CARE OF WATER

Full responsibility for care of water shall be borne by the Contractor until completion of work under this contract. The Contractor shall provide the materials and equipment and perform all work necessary to facilitate construction and to protect the work from damage by water. The Contractor shall make his own investigations and determinations of conditions, both existing and anticipated concerning care of water. Plans for care of water are subject to approval by the Contracting Officer prior to construction. Facilities shall be removed upon completion of the work.

1.5 DISPOSITION OF CONSTRUCTION FACILITIES

All buildings and facilities constructed by the Contractor shall be maintained in a satisfactory condition with strict observance of the rules of sanitation, safety and order as may be established by the Contracting Officer. Prior to final payment under the contract, all buildings and facilities constructed by the Contractor for his own use shall be removed from the site by the Contractor.

1.6 ACCESS ROADS AND HAUL ROADS

1.6.1 Access Roads

Access roads as required for the prosecution of the work shall be maintained (including sprinkling for dust control, safety personnel, signals and control) within the work areas assigned to the Contractor. Consideration shall be given to the avoidance of interference with others, safety and frequency of traffic, subject to review and approval prior to construction. Access road areas shall be restored to their original or suitable condition upon completion of this contract. The Contractor shall be responsible for repair of damage to existing roads caused by his operation.

1.7 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Proposed Methods of Operation; G-AO

Progress Charts; G-AO

Construction Right-of-Way

SD-02 Shop Drawings

Care of Water; G-AO

SD-11 Closeout Submitttals

Warranty of Construction

List of warranties with copy of each

1.8 SPECIAL INSTRUCTIONS FOR PROGRESS CHARTS

To be submitted in accordance with the CONTRACT CLAUSES clause entitled "Schedule for Construction Contracts" shall indicate the required data for each of the principal features of the work. Contract changes or modifications will not include extensions of time unless the updated progress chart shows that the contract completion date is delayed due to the affect of the change on one or more principal features of the work.

1.9 WARRANTY OF CONSTRUCTION (MAR 1994)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud. (FAR 52.246-21)

1.10 PORTABLE TOILETS

Toilet facilities will not be available for Contractor's use. The Contractor shall provide and maintain portable toilets for use by the Contractor's staff. Toilet(s) shall be placed at the location directed by the Contracting Officer.

PART 2 NOT USED

PART 3 NOT USED

-- End of Section --

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SECTION 01330

SUBMITTAL PROCEDURES

09/01; Omaha Update 02/03

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SECTION 01330

SUBMITTAL PROCEDURES
09/01; Omaha Update 02/03

PART 1 GENERAL

Attachments: Submittal Register
ENG Form 4025, Transmittal Form

1.1 CONTRACTOR RESPONSIBILITIES

The Contractor is responsible for total management of his work including scheduling, control, and certification of all submittals. The submittal management system provided in these specifications is intended to be a complete system for the Contractor to use to control the quality of materials, equipment and workmanship provided by manufacturers, fabricators, suppliers and subcontractors. The Contractor shall review each submittal for contract compliance. Submittals that comply will be forwarded to the Government. Submittals that do not conform will be returned to the originator to be corrected. The Submittal Register (ENG Form 4288) will be utilized to log and monitor all submittal activities. No construction or installation activities shall be performed prior to required approvals of applicable submittals. The Contractor shall perform a check to assure that all materials and/or equipment have been tested, submitted and approved during the preparatory phase of quality control inspections.

1.2 SUBMITTAL IDENTIFICATION (SD)

Submittals required are identified by SD numbers and titles as follows:

SD-01 Preconstruction Submittals

Tabular lists showing location, features, or other pertinent information regarding products, materials, equipment, or components to be used in the work.

In addition, the following items are included:

Work plan
Quality control plan

Permits

SD-02 Shop Drawings

Submittals which graphically show relationship of various components of the work, schematic diagrams of systems, details of fabrication, layouts of particular elements, connections, and other relational aspects of the work.

SD-03 Product Data

Catalog cuts, illustrations, schedules, diagrams, performance charts, instructions and brochures illustrating size, physical appearance and other

characteristics of materials or equipment for some portion of the work.

Samples of warranty language when the contract requires extended product warranties.

SD-04 Samples

Samples, including both fabricated and unfabricated physical examples of materials, products, and units of work as complete units or as portions of units of work.

Physical examples of materials, equipment or workmanship that illustrate functional and aesthetic characteristics of a material or product and establish standards by which the work can be judged. Color samples from the manufacturer's standard line (or custom color samples if specified) to be used in selecting or approving colors for the project.

Field samples and mock-ups constructed on the project site establish standards by which the ensuring work can be judged. Includes assemblies or portions of assemblies which are to be incorporated into the project and those which will be removed at conclusion of the work.

SD-05 Design Data

Calculations, mix designs, analyses or other data pertaining to a part of work.

SD-06 Test Reports

Report signed by authorized official of testing laboratory that a material, product or system identical to the material, product or system to be provided has been tested in accordance with specified requirements. (Testing must have been within three years of date of contract award for the project.)

Report which includes findings of a test required to be performed by the contractor on an actual portion of the work or prototype prepared for the project before shipment to job site.

Report which includes finding of a test made at the job site or on sample taken from the job site, on portion of work during or after installation.

Investigation reports

Daily checklists

Final acceptance test and operational test procedure

SD-07 Certificates

A document, required of the Contractor, or through the Contractor, from a supplier, installer, manufacturer, or other lower tier Contractor, the purpose of which is to confirm the quality or orderly progression of a portion of the work by documenting procedures, acceptability of methods or personnel, qualifications, or other verifications of quality.

Statement signed by an official authorized to certify on behalf of the manufacturer of a product, system or material, attesting that the product, system or material meets specified requirements. The statement must be

dated after the award of the contract, must state the Contractor's name and address, must name the project and location, and must list the specific requirements which are being certified.

Confined space entry permits.

SD-08 Manufacturer's Instructions

Preprinted material describing installation of a product, system or material, including special notices and material safety data sheets, if any, concerning impedances, hazards, and safety precautions.

SD-09 Manufacturer's Field Reports

Documentation of the testing and verification actions taken by manufacturer's representative to confirm compliance with manufacturer's standards or instructions.

Factory test reports.

SD-10 Operation and Maintenance Data

Data intended to be incorporated in operations and maintenance manuals.

SD-11 Closeout Submittals

Documentation to record compliance with technical or administrative requirements or to establish an administrative mechanism.

In addition, the following items are included:

As-built drawings

Special warranties

Posted operating instructions

Training plan

1.3 SUBMITTAL CLASSIFICATION

Submittals are classified as follows:

1.3.1 Government Approved

Governmental approval is required for extensions of design, critical materials, deviations, equipment whose compatibility with the entire system must be checked, and other items as designated by the Contracting Officer. Within the terms of the Contract Clause entitled "Specifications and Drawings for Construction," they are considered to be "shop drawings." All submittals noted in the technical specifications and Submittal Register as "G-DO", "G-AE" or "G-AO" are subject to Government Approval.

1.3.2 Information Only (FIO)

All submittals not requiring Government approval will be for information only. They are not considered to be "shop drawings" within the terms of the Contract Clause referred to above. The Contracting Officer has the option to review any submittal.

1.3.3 Administrative Submittals

The submittal items listed below are not be included on the Submittal Register (as discussed below). Unless directed otherwise by the Contracting Officer, the following administrative submittals shall be submitted to the Area or Resident (as directed) Office, for approval, via a Serial Letter: Quality Control Plans (Section 01451A CONTRACTOR QUALITY CONTROL), Accident Prevention Plans (Section 01400 SPECIAL SAFETY REQUIREMENTS, Environmental Protection Plans (Section 01355 ENVIRONMENTAL PROTECTION) and other submittals as directed by the Contracting Officer. Format for the Serial Letter shall be as directed by the Area or Resident Office.

1.4 APPROVED SUBMITTALS

The Contracting Officer's approval of submittals shall not be construed as a complete check, but will indicate only that the general method of construction, materials, detailing and other information are satisfactory. Approval will not relieve the Contractor of the responsibility for any error which may exist, as the Contractor under the Contractor Quality Control (CQC) requirements of this contract is responsible for dimensions, the design of adequate connections and details, and the satisfactory construction of all work. After submittals have been approved by the Contracting Officer, no resubmittal for the purpose of substituting materials or equipment will be considered unless accompanied by an explanation of why a substitution is necessary.

1.5 DISAPPROVED SUBMITTALS

The Contractor shall make all corrections required by the Contracting Officer and promptly furnish a corrected submittal in the form and number of copies specified for the initial submittal. If the Contractor considers any correction indicated on the submittals to constitute a change to the contract, a notice in accordance with the Contract Clause "Changes" shall be given promptly to the Contracting Officer.

1.6 WITHHOLDING OF PAYMENT

Payment for materials incorporated in the work will not be made if required approvals have not been obtained.

1.7 GENERAL

The Contractor shall make submittals as required by the specifications. The Contracting Officer may request submittals in addition to those specified when deemed necessary to adequately describe the work covered in the respective sections. Units of weights and measures used on all submittals shall be the same as those used in the contract drawings. Each submittal shall be complete and in sufficient detail to allow ready determination of compliance with contract requirements. Prior to submittal, all items shall be checked and approved by the Contractor's Quality Control (CQC) System Manager and each item shall be stamped, signed, and dated by the CQC System Manager indicating action taken. Proposed deviations from the contract requirements shall be clearly identified. Submittals shall include items such as: Contractor's, manufacturer's, or fabricator's drawings; descriptive literature including (but not limited to) catalog cuts, diagrams, operating charts or curves; test reports; test cylinders; samples; O&M manuals (including parts list);

certifications; warranties; and other such required submittals. Submittals requiring Government approval shall be scheduled and made prior to the acquisition of the material or equipment covered thereby. Samples remaining upon completion of the work shall be picked up and disposed of in accordance with manufacturer's Material Safety Data Sheets (MSDS) and in compliance with existing laws and regulations.

1.8 SUBMITTAL REGISTER AND ENG FORM 4288 (RMS) SUBMITTAL REGISTER

At the end of this section is a submittal register (submittal form) showing items of equipment and materials for which submittals are required by the specifications; this list may not be all inclusive and additional submittals may be required. The attached submittal register identifies only the submittal section, type of submittal, description of item submitted, paragraph number related to submittal item (section submittal paragraph if none listed), submittal classification (G), and submittal reviewer identifier (DO, AE or AO). Any submittal without a submittal classification and submittal reviewer identifier is considered to be For Information Only (FIO). The submittal register generated by the Government Resident Management System (RMS) Software is used for tracking construction submittals and is referred to as ENG Form 4288 (RMS). The Contractor shall maintain an ENG Form 4288 (RMS) for the project in accordance with the attached ENG Form 4288 (RMS) Instructions. The Contractor will be furnished one (1) set of ENG Forms 4288 (RMS) at the preconstruction conference. Much of the same information contained on the atttached submittal register will be included on the ENG Forms 4288 (RMS) furnished to the Contractor. The Contractor shall complete the appropriate columns as indicated on the attached ENG Form 4288 (RMS) Instructions and return to the Contracting Officer for approval within 20 calendar days after the preconstruction conference. The ENG Form 4288 (RMS)will become a part of the contract after approval. The TRANSMITTAL NUMBER AND ITEM NUMBER shall be left blank for use later to record the respective transmittal and item number corresponding to those listed on the transmittal form entitled: "TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES, OR MANUFACTURER'S CERTIFICATES OF COMPLIANCE" (ENG Form 4025). The approved ENG Form 4288 (RMS) will become the scheduling document and will be used to control submittals throughout the life of the contract. The ENG Form 4288 (RMS) and the progress schedules shall be coordinated.

1.9 SCHEDULING

Submittals covering component items forming a system or items that are interrelated shall be scheduled to be coordinated and submitted concurrently. Certifications to be submitted with the pertinent drawings shall be so scheduled. Adequate time (a minimum of 20 calendar days exclusive of mailing time) shall be allowed and shown on the register for review and approval. No delay damages or time extensions will be allowed for time lost in late submittals.

1.10 TRANSMITTAL FORM (ENG FORM 4025)

The sample transmittal form (ENG Form 4025) attached to this section shall be used for submitting both Goverment approved and information only submittals in accordance with the instructions on the reverse side of the form. These forms will be furnished to the Contractor. This form shall be properly completed by filling out all the heading blank spaces and identifying each item submitted. Special care shall be exercised to ensure proper listing of the specification paragraph and/or sheet number of the contract drawings pertinent to the data submitted for each item.

1.11 SUBMITTAL PROCEDURES

Submittals shall be made as follows:

1.11.1 Procedures

1.11.1.1 "G-DO" or "G-AE" Submittals

All items listed as "G-DO" or "G-AE" submittals in the various sections or on the Submittal Register shall be mailed directly to the addressee shown below as directed. For each submittal, a completed information copy of the attached transmittal form shall also be mailed to the Area Engineer .

Technical Reviewer

Engineering Division (DO)
Attn: CENWO-ED-DI
U.S. Army Engineer District, Omaha
106 South 15th Street
Omaha, NE 68102-1618

Each required submittal which is in the form of a drawing shall be submitted as seven (7) prints of the drawing. Drawing prints shall be either blue or black line permanent-type prints on a white background or blueprint and shall be sufficiently clear and suitable for making legible copies.

All catalog and descriptive data shall be submitted in seven (7) copies. Catalog cuts and other descriptive data which have more than one model, size, or type or which shows optional equipment shall be clearly marked to show the model, size, or type and all optional equipment which is proposed for approval. Submittals on component items forming a system or that are interrelated shall be submitted at one time as a single submittal in order to demonstrate that the items have been properly coordinated and will function as a unit.

1.11.1.2 "G-AO" and FIO Submittals

Except as noted below, data for all items listed as "G-AO" Submittals in the various sections shall be submitted in five (5) copies to the Area Engineer using the transmittal form. Items not to be submitted in multiples, such as samples and test cylinders, shall be submitted to the Area or Resident Engineer (as directed) accompanied by five (5) copies of the transmittal form.

Except as noted below, data for all items listed as FIO Submittals in the various sections shall be submitted in three (3) copies to the Area Engineer using the transmittal form. Items not to be submitted in multiples, such as samples and test cylinders, shall be submitted to the Area or Resident Engineer (as directed) accompanied by three (3) copies of the transmittal form. The Government has the option to review any FIO submittal.

1.11.1.3 Certificates of Compliance

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 date 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, after tests are performed on selected samples, the material is found not to meet the specific requirements.

1.11.1.4 Purchase Orders

Copies of purchase orders shall be furnished to the Contracting Officer when the Contractor requests assistance for expediting deliveries of equipment or materials, or when requested by the Contracting Officer for the purpose of quality assurance review. Each purchase order issued by the Contractor or his subcontractors for materials and equipment to be incorporated into the project shall (1) be clearly identified with the applicable DA contract number, (2) carry an identifying number, (3) be in sufficient detail to identify the material being purchased, (4) indicate a definite delivery date, and (5) display the DMS priority rating, if applicable.

1.11.1.5 Operation and Maintenance Instructions and/or Manuals

Where required by various technical sections, operations and maintenance instructions and/or manuals with parts lists included shall be provided by the Contractor in quintuplicate, unless otherwise specified, and shall be assembled in three-ring binders with index and tabbed section divider and having a cover indicating the contents by equipment or system name and project title and shall be submitted for approval to the Contracting Officer 90 days prior to final tests of mechanical and electrical systems, unless otherwise specified. Each operation and maintenance manual shall contain a copy of all warranties and a list of local service representatives required by Section 01200 Warranty of Construction. If field testing requires these copies to be revised, they shall be updated and resubmitted for approval within 10 calendar days after completion of tests. The Operations and Maintenance Instructions and/or Manuals shall be shown as a separate activity on the Contractor prepared construction schedule bar chart or network analysis system.

1.11.2 Deviations

For submittals which include proposed deviations requested by the Contractor, the column "variation" of ENG Form 4025 shall be checked. The Contractor shall set forth in writing the reason for any deviations and annotate such deviations on the submittal. The Government reserves the right to rescind inadvertent approval of submittals containing unnoted deviations.

1.12 CONTROL OF SUBMITTALS

The Contractor shall carefully control his procurement operations to ensure that each individual submittal is made on or before the Contractor scheduled submittal date shown on the approved "Submittal Register."

1.13 GOVERNMENT APPROVED SUBMITTALS

Upon completion of review of submittals requiring Government approval, the submittals will be identified as having received approval by being so stamped and dated.

1.13.1 "G-AE" or "G-DO" Submittals

The drawing print and five (5) sets of all catalog data and descriptive literature and drawing prints will be retained by the Contracting Officer and two (2) sets of catalog data and descriptive literature and drawing prints will be returned to the Contractor.

1.13.2 "G-AO" Submittals

Two (2) copies of "G-AO" submittals for approval will be returned to the Contractor except for samples, test cylinders, and O&M manuals for which two (2) copies of the transmittal form only will be returned to the Contractor.

1.14 INFORMATION ONLY SUBMITTALS

Normally submittals for information only will not be returned. Review by the Contracting Officer is not required on information only submittals. The Government reserves the right to require the Contractor to resubmit any item found not to comply with the contract. This does not relieve the Contractor from the obligation to furnish material conforming to the plans and specifications; will not prevent the Contracting Officer from requiring removal and replacement of nonconforming material incorporated in the work; and does not relieve the Contractor of the requirement to furnish samples for testing by the Government laboratory or for check testing by the Government in those instances where the technical specifications so prescribe.

1.15 STAMPS

Stamps used by the Contractor on the submittal data to certify that the submittal meets contract requirements shall be similar to the following. The stamp shall be affixed and filled out on the back of each ENG Form 4025.

CONTRACTOR

(Firm Name)

_____ Approved

_____ Approved with corrections as noted on submittal data and/or attached sheets(s).

SIGNATURE: _____

TITLE: _____

DATE: _____

INSTRUCTIONS
ENG FORM 4288 (RMS)

1. The Contractor shall utilize the ENG Form 4288 (RMS) generated by the Government Residential Management System (RMS)software for tracking construction submittals. The Submittal Register information, columns (c) thru (f) from the Submittal Forms furnished with this solicitation, [will be utilized by the Government] to generate the ENG Form 4288 (RMS). [The Government will furnish the Contractor a hard copy of the ENG Form 4288 (RMS) at the preconstruction conference.]. The ENG Form 4288 (RMS) includes the following items and parties responsible for completing the information required on the ENG Form 4288 (RMS). The subparagraph headings below do not correspond to the Submittal Register column headings.

a. Activity Number: will be provided by the Contractor from his Network Analysis, if required, and when a network analysis is accepted.

b. Transmittal Number and Item Number: will be provided by the Contractor from ENG Form 4025 for each item.

c. Specification Paragraph Number: will be provided by the Government from the Submittal Register from column entitled "Specification Paragraph Number".

d. Description of Submittal: will be provided by the Government from the Submittal Register from column entitled "Description of Item Submitted".

e. Type of Submittal: will be provided by the Government from the Submittal Register from column entitled "Type of Submittal" or "Description of Item Submitted".

f. Classification: will be provided by the Government from the Submittal Register from column entitled "Classification".

g. Reviewing Office - Reviewer: will be provided by the Government from the Submittal Register from column entitled "Classification" or "Reviewer".

h. Contractor Schedule Dates: the Contractor will provide schedule dates for

"Submit Needed By" (Date the Contractor expects to submit an item. It is the Contractors responsibility to calculate the lead time needed for the government approval. Note if resubmittal is required it is the Contractors responsibility to make all adjustments necessary to meet the contract completion date.)

"Approval Needed By" (date the Contractor can receive approval and still obtain the material by need date.), and

"Material Needed By" (date that the material is needed at the site. If there is a network analysis it should reflect that date on the analysis.)

i. Contractor Action: Includes the following items: "Code" and "Submit to the Corps". These items will be completed by the Contractor. The action codes will be one of the following:

A - Approved as submitted.

B - Approved, except as noted.
G - Other (specify)

j. Government Action: This item includes a Government Action "Code" and "Date" and is reserved for Government use. The Government reserves the right to review any submittal for contract compliance. Receipt of an Action Code "F - Receipt Acknowledged" or failure of the Contractor to receive an Action Code by the Government, does not mean that the submittal is in compliance with the contract requirements. When used by the Government, the action code will be one of the following:

A - Approved as submitted.
B - Approved except as noted on drawings.
C - Approved, except as noted on drawings. Refer to attached ____ sheet resubmission required.
D - Will be returned by separate correspondence.
E - Disapproved (See Attached).
F - Receipt Acknowledged.
Fx - Receipt acknowledged, does not comply as noted with contract requirements.
G - Other (specify).

2. Reviewer Abbreviation code will be as follows;

G-DO, G-AE or G-AO - Government Approved
For Information Only - Any submittal without a Government Approved abbreviation code.

INSTRUCTIONS
ENG FORM 4025

1. DATE at the top of form will be the date submitted to the Government which is to be completed by the Contractor.

2. TRANSMITTAL NO. Each new transmittal (i.e. [G-AE,] [G-DO,] G-AO or FIO) shall be numbered consecutively for each specification section in the space provided in "Transmittal No.". This number will be the identifying symbol for each submittal. Example: "15400A-001", "15895A-001" "15895A-002", "16415A-001", etc. For each new submittal or for a resubmittal, the appropriate box must be marked. Resubmittals must be designated by their original sequential number followed by an ".1", ".2", etc. for each sequential resubmittal. Example: "15895A-001.1" (previous submittal No. 15895A-001).

3. TO: Box will contain the name and address of the office which will review the submittal (as designated by the Contracting Officer).

4. FROM: Box will be the name and address of the Contractor. Contractor is to complete this box.

5. CONTRACT NO. box will contain the Contractors construction contract number (e.g., DACXXX-XX-C-XXXX).

6. CHECK ONE box

a. CHECK ONE box (for transmittal/ retransmittal) will be completed by the Contractor with one box marked. If a resubmittal is provided last transmittal number will be added.

b. CHECK ONE box will be completed by the Contractor with one box marked for the submittal type.

7. SPECIFICATION SECTION NO. box will be completed by the Contractor. The number will be the five digit number found in the specifications. No more than one section will be covered with each transmittal.

8. PROJECT TITLE AND LOCATION box will be completed by the Contractor.

9. Column a, will be completed by the Contractor and will contain a different number for each item submitted in that transmittal. Once a number is assigned to an item it will remain the same even if there is a resubmittal.

10. Column b, will be completed by the Contractor. The description of each item on this form will be the descriptions provided on the submittal register. The Contractor shall submit each submittal register item all at once on one transmittal if possible. If a submittal register item can not be submitted all at once Contractor should note that in the remarks box.

11. Column c, will be completed by the Contractor. The information will be the appropriate submittal description number as described this Section or shown on the submittal register (e.g. SD-XX).

12. Column d, will be completed by the Contractor. The number of copies will be determined by the Contractor after review of submittal register for the classification of the item and after review of paragraph: SUBMITTAL

PROCEDURES of this Section.

13. Column e, will be completed by the Contractor. The Contractor shall state all applicable paragraph numbers.

14. Column f, will be completed by the Contractor. The Contractor shall state all applicable drawing sheet numbers.

15. Column g, will be completed by the Contractor. The action codes will be one of the following:

A - Approved as submitted.
B - Approved, except as noted.
G - Other (specify)

16. Column h, will be completely by the Contractor. A check shall be placed in this column when a submittal is not in accordance with the plans and specifications also, a written statement to that effect shall be included in the space provided for "Remarks".

17. Column i, is reserved for Government use and may or may not be provided. When used by the Government, the action code will be one of the following:

A - Approved as submitted.
B - Approved except as noted on drawings.
C - Approved, except as noted on drawings. Refer to attached ____ sheet resubmission required.
D - Will be returned by separate correspondence.
E - Disapproved (See Attached).
F - Receipt Acknowledged.
Fx - Receipt acknowledged, does not comply as noted with contract requirements.
G - Other (specify).

18. REMARKS box self explained.

19. Contractor Quality Control Manager must provide name and sign all Eng Form 4025 certifying conformance. In the space for the name and signature, also include a phone number where the CQC Manager may be reached.

20. Section II will be completed by the Government. Contractor is not to write in this space.

See reverse side of ENG Form 4025 for additional instructions.

-- End of Section --

SUBMITTAL REGISTER

CONTRACT NO.

TITLE AND LOCATION
Nishu Point Bank Stabilization, Garrison Project, ND

CONTRACTOR

ACTIVITY NO	TRANSMITTAL NO	SPEC SECT	DESCRIPTION ITEM SUBMITTED	PARAGRAPH #	CLASSIFICATION	GOVT OR A/E REVWR	CONTRACTOR: SCHEDULE DATES			CONTRACTOR ACTION			APPROVING AUTHORITY					
							SUBMIT	APPROVAL NEEDED BY	MATERIAL NEEDED BY	ACTION CODE	DATE OF ACTION	DATE FWD TO APPR AUTH/ DATE RCD FROM CONTR	DATE FWD TO OTHER REVIEWER	DATE RCD FROM OTH REVIEWER	ACTION CODE	DATE OF ACTION	MAILED TO CONTR/ DATE RCD FRM APPR AUTH	REMARKS
(a)	(b)	(c)	(d)	(e)	(f)		(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)
		01200	SD-01 Preconstruction Submittals															
			Proposed Methods of Operation		G	AO												
			Progress Charts	1.8	G	AO												
			Construction Right-of-Way															
			SD-02 Shop Drawings															
			Care of Water	1.4	G	AO												
			SD-11 Closeout Submittals															
			Warranty of Construction															
		01355	SD-01 Preconstruction Submittals															
			Environmental Protection Plan	1.7	G	AO												
		01400	SD-01 Preconstruction Submittals															
			Accident Prevention Plan		G	AO												
			SD-07 Certificates															
			Qualifications		G	AO												
		02246	SD-06 Test Reports															
			Riprap - Field Gradation		G	AO												
			SD-03 Product Data															
			Waybills and Delivery Tickets															
		02300	SD-03 Product Data															
			Borrow Materil - Letters From															
			Land Owners															
			SD-06 Test Reports															
			Backfill - Testing		G	AO												
			Ground Surface - Testing		G	AO												
			Embankment - Testing		G	AO												
			Subgrade - Compaction - Testing		G	AO												

SUBMITTAL REGISTER

CONTRACT NO.

TITLE AND LOCATION
Nishu Point Bank Stabilization, Garrison Project, ND

CONTRACTOR

ACTIVITY NO	TRANSMITTAL NO	SPEC SECT	DESCRIPTION ITEM SUBMITTED	PARAGRAPH #	CLASSIFICATION	GOVT OR A/E REVWR	CONTRACTOR: SCHEDULE DATES			CONTRACTOR ACTION			APPROVING AUTHORITY					MAILED TO CONTR/ DATE RCD FRM APPR AUTH	REMARKS
							SUBMIT	APPROVAL NEEDED BY	MATERIAL NEEDED BY	ACTION CODE	DATE OF ACTION	DATE FWD TO APPR AUTH/ DATE RCD FROM CONTR	DATE FWD TO OTHER REVIEWER	DATE RCD FROM OTH REVIEWER	ACTION CODE	DATE OF ACTION			
(a)	(b)	(c)	(d)	(e)	(f)		(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	
		02300	Moisture Contents - Testing		G AO														
			Optimum Moisture & Laboratory		G AO														
			Maximum Density - Testing																
			SD-07 Certificates																
			Testing - Lab Certification																
		02921	SD-06 Test Reports																
			Seed Test		G AO														

TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES, OR MANUFACTURER'S CERTIFICATES OF COMPLIANCE *(Read instructions on the reverse side prior to initiating this form)*	DATE	TRANSMITTAL NO.

SECTION I - REQUEST FOR APPROVAL OF THE FOLLOWING ITEMS *(This section will be initiated by the contractor)*

TO:	FROM:	CONTRACT NO.	CHECK ONE: ☐ THIS IS A NEW TRANSMITTAL ☐ THIS IS A RESUBMITTAL OF TRANSMITTAL _____
SPECIFICATION SEC. NO. *(Cover only one section with each transmittal)*	PROJECT TITLE AND LOCATION		CHECK ONE: THIS TRANSMITTAL IS FOR ☐ FIO ☐ GOV'T. APPROVAL

ITEM NO. *a.*	DESCRIPTION OF ITEM SUBMITTED *(Type size, model number/etc.)* *b.*	MFG OR CONTR. CAT., CURVE DRAWING OR BROCHURE NO. *(See instruction no. 8)* *c.*	NO. OF COPIES *d.*	CONTRACT REFERENCE DOCUMENT		FOR CONTRACTOR USE CODE *g.*	VARIATION *(See instruction No. 6)* *h.*	FOR CE USE CODE *i.*
				SPEC. PARA. NO. *e.*	DRAWING SHEET NO. *f.*			

REMARKS

I certify that the above submitted items have been reviewed in detail and are correct and in strict conformance with the contract drawings and specifications except as other wise stated.

_____

NAME AND SIGNATURE OF CONTRACTOR

SECTION II - APPROVAL ACTION

ENCLOSURES RETURNED *(List by Item No.)*	NAME, TITLE AND SIGNATURE OF APPROVING AUTHORITY	DATE

INSTRUCTIONS

1. Section I will be initiated by the Contractor in the required number of copies.

2. Each transmittal shall be numbered consecutively in the space provided for "Transmittal No.". This number, in addition to the contract number, will form a serial number for identifying each submittal. For new submittals or resubmittals mark the appropriate box; on resubmittals, insert transmittal number of last submission as well as the new submittal number.

3. The "Item No." will be the same "Item No." as indicated on ENG FORM 4288-R for each entry on this form.

4. Submittals requiring expeditious handling will be submitted on a separate form.

5. Separate transmittal form will be used for submittals under separate sections of the specifications.

6. A check shall be placed in the "Variation" column when a submittal is not in accordance with the plans and specifications--also, a written statement to that effect shall be included in the space provided for "Remarks".

7. Form is self-transmittal, letter of transmittal is not required.

8. When a sample of material or Manufacturer's Certificate of Compliance is transmitted, indicate "Sample" or "Certificate" in column c, Section I.

9. U.S. Army Corps of Engineers approving authority will assign action codes as indicated below in space provided in Section I, column i to each item submitted. In addition they will ensure enclosures are indicated and attached to the form prior to return to the contractor. The Contractor will assign action codes as indicated below in Section I, column g, to each item submitted.

THE FOLLOWING ACTION CODES ARE GIVEN TO ITEMS SUBMITTED

A -- Approved as submitted.

B -- Approved, except as noted on drawings.

C -- Approved, except as noted on drawings. Refer to attached sheet resubmission required.

D -- Will be returned by separate correspondence.

E -- Disapproved (See attached).

F -- Receipt acknowledged.

FX -- Receipt acknowledged, does not comply as noted with contract requirements.

G -- Other *(Specify)*

10. Approval of items does not relieve the contractor from complying with all the requirements of the contract plans and specifications.

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DIVISION 01 - GENERAL REQUIREMENTS

SECTION 01355

ENVIRONMENTAL PROTECTION

10/00

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-- End of Section Table of Contents --

SECTION 01355

ENVIRONMENTAL PROTECTION
10/00

PART 1 GENERAL

Attachments
Authorization to Discharge Under the North Dakota Pollutant Discharge Elimination System (Permit No. NDR03-000)
Notice of Intent (NOI)
Notice of Termination (NOT)
Storm Water Pllution Prevention (SWPP) Plan

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

33 CFR 328	Definitions
40 CFR 68	Chemical Accident Prevention Provisions
40 CFR 261	Identification and Listing of Hazardous Waste
40 CFR 262	Standards Applicable to Generators of Hazardous Waste
40 CFR 279	Standards for the Management of Used Oil
40 CFR 302	Designation, Reportable Quantities, and Notification
40 CFR 355	Emergency Planning and Notification
49 CFR 171 - 178	Hazardous Materials Regulations

U.S. ARMY CORPS OF ENGINEERS (USACE)

EM 385-1-1	(1996) U.S. Army Corps on Engineers Safety and Health Requirements Manual
WETLAND MANUAL	Corps of Engineers Wetlands Delineation Manual Technical Report Y-87-1

1.2 DEFINITIONS

1.2.1 Environmental Pollution and Damage

Environmental pollution and damage is the presence of chemical, physical,

or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to humankind; or degrade the environment aesthetically, culturally and/or historically.

1.2.2 Environmental Protection

Environmental protection is the prevention/control of pollution and habitat disruption that may occur to the environment during construction. The control of environmental pollution and damage requires consideration of land, water, and air; biological and cultural resources; and includes management of visual aesthetics; noise; solid, chemical, gaseous, and liquid waste; radiant energy and radioactive material as well as other pollutants.

1.2.3 Contractor Generated Hazardous Waste

Contractor generated hazardous waste means materials that, if abandoned or disposed of, may meet the definition of a hazardous waste. These waste streams would typically consist of material brought on site by the Contractor to execute work, but are not fully consumed during the course of construction. Examples include, but are not limited to, excess paint thinners (i.e. methyl ethyl ketone, toluene etc.), waste thinners, excess paints, excess solvents, waste solvents, and excess pesticides, and contaminated pesticide equipment rinse water.

1.2.4 Land Application for Discharge Water

The term "Land Application" for discharge water implies that the Contractor shall discharge water at a rate which allows the water to percolate into the soil. No sheeting action, soil erosion, discharge into storm sewers, discharge into defined drainage areas, or discharge into the "waters of the United States" shall occur. Land Application shall be in compliance with all applicable Federal, State, and local laws and regulations.

1.2.5 Surface Discharge

The term "Surface Discharge" implies that the water is discharged with possible sheeting action and subsequent soil erosion may occur. Waters that are surface discharged may terminate in drainage ditches, storm sewers, creeks, and/or "waters of the United States" and would require a permit to discharge water from the governing agency.

1.2.6 Waters of the United States

All waters which are under the jurisdiction of the Clean Water Act, as defined in 33 CFR 328.

1.2.7 Wetlands

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, and bogs. Official determination of whether or not an area is classified as a wetland must be done in accordance with WETLAND MANUAL.

1.3 GENERAL REQUIREMENTS

The Contractor shall minimize environmental pollution and damage that may occur as the result of construction operations. The environmental resources within the project boundaries and those affected outside the limits of permanent work shall be protected during the entire duration of this contract. The Contractor shall comply with all applicable environmental Federal, State, and local laws and regulations. The Contractor shall be responsible for any delays resulting from failure to comply with environmental laws and regulations.

1.4 SUBCONTRACTORS

The Contractor shall ensure compliance with this section by subcontractors.

1.5 PAYMENT

No separate payment will be made for work covered under this section. The Contractor shall be responsible for payment of fees associated with environmental permits, application, and/or notices obtained by the Contractor. All costs associated with this section shall be included in the contract price. The Contractor shall be responsible for payment of all fines/fees for violation or non-compliance with Federal, State, Regional and local laws and regulations.

1.6 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Environmental Protection Plan; G-AO,

The environmental protection plan.

1.7 ENVIRONMENTAL PROTECTION PLAN

Prior to commencing construction activities or delivery of materials to the site, the Contractor shall submit an Environmental Protection Plan for review and approval by the Contracting Officer. The purpose of the Environmental Protection Plan is to present a comprehensive overview of known or potential environmental issues which the Contractor must address during construction. Issues of concern shall be defined within the Environmental Protection Plan as outlined in this section. The Contractor shall address each topic at a level of detail commensurate with the environmental issue and required construction task(s). Topics or issues which are not identified in this section, but which the Contractor considers necessary, shall be identified and discussed after those items formally identified in this section. Prior to submittal of the Environmental Protection Plan, the Contractor shall meet with the Contracting Officer for the purpose of discussing the implementation of the initial Environmental Protection Plan; possible subsequent additions and revisions to the plan including any reporting requirements; and methods for administration of the Contractor's Environmental Plans. The Contractor shall maintain a current version of the Environmental Protection Plan on site for review by interested parties.

1.7.1 Compliance

No requirement in this Section shall be construed as relieving the Contractor of any applicable Federal, State, and local environmental protection laws and regulations. During Construction, the Contractor shall be responsible for identifying, submitting for approval, and implementing any additional requirements to be included in the Environmental Protection Plan.

1.7.2 Contents

The environmental protection plan shall include, but shall not be limited to, the following:

a. Name(s) of person(s) within the Contractor's organization who is(are) responsible for ensuring adherence to the Environmental Protection Plan.

b. Name(s) and qualifications of person(s) responsible for manifesting hazardous waste to be removed from the site, if applicable.

c. Name(s) and qualifications of person(s) responsible for training the Contractor's environmental protection personnel.

d. Description of the Contractor's environmental protection personnel training program.

e. The Spill Control plan shall include the procedures, instructions, and reports to be used in the event of an unforeseen spill of a substance regulated by 40 CFR 68, 40 CFR 302, 40 CFR 355, and/or regulated under State or Local laws and regulations. The Spill Control Plan supplements the requirements of EM 385-1-1. This plan shall include as a minimum:

1. The name of the individual who will report any spills or hazardous substance releases and who will follow up with complete documentation. This individual shall immediately notify the Contracting Officer and the local Fire Department in addition to the legally required Federal, State, and local reporting channels (including the National Response Center 1-800-424-8802) if a reportable quantity is released to the environment. The plan shall contain a list of the required reporting channels and telephone numbers.

2. The name and qualifications of the individual who will be responsible for implementing and supervising the containment and cleanup.

3. Training requirements for Contractor's personnel and methods of accomplishing the training.

4. A list of materials and equipment to be immediately available at the job site, tailored to cleanup work of the potential hazard(s) identified.

5. The names and locations of suppliers of containment materials and locations of additional fuel oil recovery, cleanup, restoration, and material-placement equipment available in case of

an unforeseen spill emergency.

6. The methods and procedures to be used for expeditious contaminant cleanup.

f. A non-hazardous solid waste disposal plan identifying methods and locations for solid waste disposal including clearing debris. The plan shall include schedules for disposal. The Contractor shall identify any subcontractors responsible for the transportation and disposal of solid waste. Licenses or permits shall be submitted for solid waste disposal sites that are not a commercial operating facility. Evidence of the disposal facility's acceptance of the solid waste shall be attached to this plan during the construction.

g. A recycling and solid waste minimization plan with a list of measures to reduce consumption of energy and natural resources. The plan shall detail the Contractor's actions to comply with and to participate in Federal, State, Regional, and local government sponsored recycling programs to reduce the volume of solid waste at the source.

h. An air pollution control plan detailing provisions to assure that dust, debris, materials, trash, etc., do not become air borne and travel off the project site.

i. A contaminant prevention plan that: identifies potentially hazardous substances to be used on the job site; identifies the intended actions to prevent introduction of such materials into the air, water, or ground; and details provisions for compliance with Federal, State, and local laws and regulations for storage and handling of these materials. In accordance with EM 385-1-1, a copy of the Material Safety Data Sheets (MSDS) and the maximum quantity of each hazardous material to be on site at any given time shall be included in the contaminant prevention plan. As new hazardous materials are brought on site or removed from the site, the plan shall be updated.

j. A waste water management plan that identifies the methods and procedures for management and/or discharge of waste waters which are directly derived from construction activities, such as concrete curing water, clean-up water, dewatering of ground water, disinfection water, hydrostatic test water, and water used in flushing of lines.

1.7.3 Appendix

Copies of all environmental permits, permit application packages, approvals to construct, notifications, certifications, reports, and termination documents shall be attached, as an appendix, to the Environmental Protection Plan.

1.8 PROTECTION FEATURES

This paragraph supplements the Contract Clause PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS. Prior to start of any on site construction activities, the Contractor and the Contracting Officer shall make a joint condition survey. Immediately following the survey, the Contractor shall prepare a brief report including a plan describing the features requiring protection under the provisions of the Contract Clauses, which are not specifically identified on the drawings as environmental features requiring protection along with the condition of trees, shrubs and grassed areas immediately adjacent to the site of work

and adjacent to the Contractor's assigned storage area and access route(s), as applicable. This survey report shall be signed by both the Contractor and the Contracting Officer upon mutual agreement as to its accuracy and completeness. The Contractor shall protect those environmental features included in the survey report and any indicated on the drawings, regardless of interference which their preservation may cause to the Contractor's work under the contract.

1.8.1 Applications, Supporting Documents, and Fees

The Contractor shall obtain and complete all environmental permit applications and notices including any documents required for a modification for an existing permit held by the Facility. The Contractor is responsible for preparing all supporting documents, including but not limited to engineering reports, emission surveys, diagrams, pollutant load calculations, etc. If, in lieu of permits, the governing agency requires review and approval of the design, the Contractor shall submit and obtain approval of the design and associated documents. The Contractor shall be responsible for all fees associated with the permits, applications, reviews, approvals, and notices.

1.6.2 Environmental Permits, Notices, Reviews, and/or Approvals

The following is a listing of permits, notices, reviews, and/or approvals which **may be** required for this project. This listing and requirements are not to be considered all-inclusive by the Contractor, but is provided as information that may be used in successfully accomplishing the environmental compliances. See Internet site http://http://www.health.state.nd.us/ndhd/for North Dakota's Environmental Issues.

a. The State of North Dakota has authority for the National Pollutant Discharge Elimination System (NPDES) program. If construction activities results in disturbance of 1 acre of land or more (sites that may be smaller than 1 acre but are part of common plan of development are considered to be over 1 acre), coverage under the Authorization to Discharge Under the North Dakota Pollutant Discharge Elimination System (NDPDES) Permit No. NDR03-0000 for storm water discharge from construction site is required. The Contractor shall be responsible for implementing the terms and requirements of the permit and shall be considered the "permittee". The Contractor shall prepare and implement a Storm Water Pollution Prevention Plan, inspections, and reporting in accordance with the NDR03-0000 Permit. The SWPPP and a copy of an unsigned Notice of Intent (NOI) shall be submitted by the Contracting Officer prior to construction commencing. The Contractor shall be responsible for all submittals to the State of North Dakota prior to construction activity beginning in accordance with Permit No. NDR03-0000. The Contractor shall retain copies of the storm water pollution prevention plan and all reports in accordance with the permit. All submissions to the State shall be by certified mail. The Contractor shall include copies of all submittals to the State of North Dakota (NOI/NOT), a return certified mail receipt, plans, and reports in the Appendix to the Environmental Protection Plan. The State of North Dakota web site for the NPDES Program is http://www.health.state.nd.us/wq/Storm/Construction/ConstructionHome.htm.

1.9 ENVIRONMENTAL ASSESSMENT OF CONTRACT DEVIATIONS

Any deviations, requested by the Contractor, from the drawings, plans and specifications which may have an environmental impact will be subject to approval by the Contracting Officer and may require an extended review, processing, and approval time. The Contracting Officer reserves the right to disapprove alternate methods, even if they are more cost effective, if the Contracting Officer determines that the proposed alternate method will have an adverse environmental impact.

1.10 NOTIFICATION

The Contracting Officer will notify the Contractor in writing of any observed noncompliance with Federal, State or local environmental laws or regulations, permits, and other elements of the Contractor's Environmental Protection plan. The Contractor shall, after receipt of such notice, inform the Contracting Officer of the proposed corrective action and take such action when approved by the Contracting Officer. The Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No time extensions shall be granted or equitable adjustments allowed to the Contractor for any such suspensions. This is in addition to any other actions the Contracting Officer may take under the contract, or in accordance with the Federal Acquisition Regulation or Federal Law.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION

3.1 ENVIRONMENTAL PERMITS AND COMMITMENTS

The Contractor shall be responsible for obtaining and complying with all environmental permits and commitments required by Federal, State, Regional, and local environmental laws and regulations.

3.2 LAND RESOURCES

The Contractor shall confine all activities to areas defined by the drawings and specifications. Prior to the beginning of any construction, the Contractor shall identify any land resources to be preserved within the work area. Except in areas indicated on the drawings or specified to be cleared, the Contractor shall not remove, cut, deface, injure, or destroy land resources including trees, shrubs, vines, grasses, topsoil, and land forms without approval. No ropes, cables, or guys shall be fastened to or attached to any trees for anchorage unless specifically authorized. The Contractor shall provide effective protection for land and vegetation resources at all times as defined in the following subparagraphs. Stone, soil, or other materials displaced into uncleared areas shall be removed by the Contractor.

3.2.1 Work Area Limits

Prior to commencing construction activities, the Contractor shall mark the areas that need not be disturbed under this contract. Isolated areas within the general work area which are not to be disturbed shall be marked or fenced. Monuments and markers shall be protected before construction operations commence. Where construction operations are to be conducted during darkness, any markers shall be visible in the dark. The Contractor's personnel shall be knowledgeable of the purpose for marking and/or protecting particular objects.

3.2.2 Landscape

Trees, shrubs, vines, grasses, land forms and other landscape features indicated and defined on the drawings to be preserved shall be clearly identified by marking, fencing, or wrapping with boards, or any other approved techniques. The Contractor shall restore landscape features damaged or destroyed during construction operations outside the limits of the approved work area.

3.2.3 Contractor Facilities and Work Areas

The Contractor's field offices, staging areas, stockpile storage, and temporary buildings shall be placed in areas designated on the drawings or as directed by the Contracting Officer. Temporary movement or relocation of Contractor facilities shall be made only when approved. Erosion and sediment controls shall be provided for on-site borrow and spoil areas to prevent sediment from entering nearby waters. Temporary excavation and embankments for plant and/or work areas shall be controlled to protect adjacent areas.

3.3 WATER RESOURCES

The Contractor shall monitor construction activities to prevent pollution of surface and ground waters. Toxic or hazardous chemicals shall not be applied to soil or vegetation unless otherwise indicated. All water areas affected by construction activities shall be monitored by the Contractor. For construction activities immediately adjacent to impaired surface waters, the Contractor shall be capable of quantifying sediment or pollutant loading to that surface water when required by State or Federally issued Clean Water Act permits.

3.3.1 Wetlands

The Contractor shall not enter, disturb, destroy, or allow discharge of contaminants into any wetlands.

3.4 AIR RESOURCES

Equipment operation, activities, or processes performed by the Contractor shall be in accordance with all Federal and State air emission and performance laws and standards.

3.4.1 Particulates

Dust particles; aerosols and gaseous by-products from construction activities; and processing and preparation of materials, such as from asphaltic batch plants; shall be controlled at all times, including weekends, holidays and hours when work is not in progress. The Contractor shall maintain excavations, stockpiles, haul roads, permanent and temporary access roads, plant sites, spoil areas, borrow areas, and other work areas within or outside the project boundaries free from particulates which would cause the Federal, State, and local air pollution standards to be exceeded or which would cause a hazard or a nuisance. Sprinkling, chemical treatment of an approved type, baghouse, scrubbers, electrostatic precipitators or other methods will be permitted to control particulates in the work area. Sprinkling, to be efficient, must be repeated to keep the disturbed area damp at all times. The Contractor must have sufficient, competent equipment available to accomplish these tasks. Particulate

control shall be performed as the work proceeds and whenever a particulate nuisance or hazard occurs. The Contractor shall comply with all State and local visibility regulations.

3.4.2 Odors

Odors from construction activities shall be controlled at all times. The odors shall not cause a health hazard and shall be in compliance with State regulations and/or local ordinances.

3.4.3 Sound Intrusions

The Contractor shall keep construction activities under surveillance and control to minimize environment damage by noise. The Contractor shall comply with the provisions of the State. rules.

3.4.4 Burning

Burning will not be allowed on the project site unless specified in other sections of the specifications or authorized in writing by the Contracting Officer. The specific time, location, and manner of burning shall be subject to approval.

3.5 CHEMICAL MATERIALS MANAGEMENT AND WASTE DISPOSAL

Disposal of wastes shall be as directed below, unless otherwise specified in other sections and/or shown on the drawings.

3.5.1 Solid Wastes

Solid wastes (excluding clearing debris) shall be placed in containers which are emptied on a regular schedule. Handling, storage, and disposal shall be conducted to prevent contamination. Segregation measures shall be employed so that no hazardous or toxic waste will become co-mingled with solid waste. The Contractor shall transport solid waste off Government property and dispose of it in compliance with Federal, State, and local requirements for solid waste disposal. A Subtitle D RCRA permitted landfill shall be the minimum acceptable off-site solid waste disposal option. The Contractor shall verify that the selected transporters and disposal facilities have the necessary permits and licenses to operate.

3.5.2 Chemicals and Chemical Wastes

Chemicals shall be dispensed ensuring no spillage to the ground or water. Periodic inspections of dispensing areas to identify leakage and initiate corrective action shall be performed and documented. This documentation will be periodically reviewed by the Government. Chemical waste shall be collected in corrosion resistant, compatible containers. Collection drums shall be monitored and removed to a staging or storage area when contents are within of the top. Wastes shall be classified, managed, stored, and disposed of in accordance with Federal, State, and local laws and regulations.

3.5.3 Contractor Generated Hazardous Wastes/Excess Hazardous Materials

Hazardous wastes are defined in 40 CFR 261, or are as defined by applicable State and local regulations. Hazardous materials are defined in 49 CFR 171 - 178. The Contractor shall, at a minimum, manage and store hazardous waste in compliance with 40 CFR 262 . The Contractor shall take

sufficient measures to prevent spillage of hazardous and toxic materials during dispensing. The Contractor shall segregate hazardous waste from other materials and wastes, shall protect it from the weather by placing it in a safe covered location, and shall take precautionary measures such as berming or other appropriate measures against accidental spillage. The Contractor shall be responsible for storage, describing, packaging, labeling, marking, and placarding of hazardous waste and hazardous material in accordance with 49 CFR 171 - 178, State, and local laws and regulations. The Contractor shall transport Contractor generated hazardous waste off Government property within 60 days in accordance with the Environmental Protection Agency and the Department of Transportation laws and regulations. The Contractor shall dispose of hazardous waste in compliance with Federal, State and local laws and regulations. Spills of hazardous or toxic materials shall be immediately reported to the Contracting Officer. Cleanup and cleanup costs due to spills shall be the Contractor's responsibility. The disposition of Contractor generated hazardous waste and excess hazardous materials are the Contractor's responsibility.

3.5.4 Fuel and Lubricants

Storage, fueling and lubrication of equipment and motor vehicles shall be conducted in a manner that affords the maximum protection against spill and evaporation. Fuel, lubricants and oil shall be managed and stored in accordance with all Federal, State, Regional, and local laws and regulations. Used lubricants and used oil to be discarded shall be stored in marked corrosion-resistant containers and recycled or disposed in accordance with 40 CFR 279, State, and local laws and regulations. There shall be no storage of fuel on the project site. Fuel must be brought to the project site each day that work is performed.

3.5.5 Waste Water

Disposal of waste water shall be as specified below.

a. Waste water from construction activities, such as onsite material processing, concrete curing, foundation and concrete clean-up, water used in concrete trucks, forms, etc. shall not be allowed to enter water ways or to be discharged prior to being treated to remove pollutants. The Contractor shall dispose of the construction related waste water off-Government property in accordance with all Federal, State, Regional and Local laws and regulations.

b. For discharge of ground water, the Contractor shall obtain a State or Federal permit specific for pumping and discharging ground water prior to surface discharging.

c. Water generated from the flushing of lines after disinfection or disinfection in conjunction with hydrostatic testing shall be land applied in accordance with all Federal, State, and local laws and regulations for land application .

3.6 RECYCLING AND WASTE MINIMIZATION

The Contractor shall participate in State and local government sponsored recycling programs. The Contractor is further encouraged to minimize solid waste generation throughout the duration of the project.

3.7 HISTORICAL, ARCHAEOLOGICAL, AND CULTURAL RESOURCES

If during excavation or other construction activities any previously unidentified or unanticipated historical, archaeological, and cultural resources are discovered or found, all activities that may damage or alter such resources shall be temporarily suspended. Resources covered by this paragraph include but are not limited to: any human skeletal remains or burials; artifacts; shell, midden, bone, charcoal, or other deposits; rock or coral alignments, pavings, wall, or other constructed features; and any indication of agricultural or other human historical activities. Upon such discovery or find, the Contractor shall immediately notify the Contracting Officer so that the appropriate authorities may be notified and a determination made as to their significance and what, if any, special disposition of the finds should be made. The Contractor shall cease all activities that may result in impact to or the destruction of these resources. The Contractor shall secure the area and prevent Contractors personnel or other persons from trespassing on, removing, or otherwise disturbing such resources.

3.8 BIOLOGICAL RESOURCES

The Contractor shall minimize interference with, disturbance to, and damage to fish, wildlife, and plants including their habitat. The Contractor shall be responsible for the protection of threatened and endangered animal and plant species including their habitat in accordance with Federal, State, Regional, and local laws and regulations.

3.8.1 Bald Eagles

The Contractor shall be responsible for identifying and avoiding disturbing bald eagles which are roosting in the project area. Bald Eagles shall not be disturbed. The Government recommends avoiding roosting bald eagles by eliminating activity within 75 meters of the roosting bald eagle. However, this is a general recommendation, and may change dependant upon location, available cover, and concealment. It is the Contractor's responsibility to accurately determine appropriate distances to avoid disturbing the Bald Eagle. The Contractor shall ensure that his employees are able to identify bald eagles and shall avoid disturbing bald eagles.

3.8.2 Migratory Birds

In accordance with Migratory Bird Treaty Act, migratory birds shall not be disturbed during nesting. It is the Contractor's responsibility to identify and avoid migratory nesting birds.

3.9 PREVIOUSLY USED EQUIPMENT

The Contractor shall clean all previously used construction equipment prior to bringing it onto the project site. The Contractor shall ensure that the equipment is free from soil residuals, egg deposits from plant pests, noxious weeds, and plant seeds. The Contractor shall consult with the USDA jurisdictional office for additional cleaning requirements.

3.10 MAINTENANCE OF POLLUTION FACILITIES

The Contractor shall maintain permanent and temporary pollution control facilities and devices for the duration of the contract or for that length of time construction activities create the particular pollutant.

3.11 TRAINING OF CONTRACTOR PERSONNEL

The Contractor's personnel shall be trained in all phases of environmental protection and pollution control. The Contractor shall conduct environmental protection/pollution control meetings for all Contractor personnel prior to commencing construction activities. The Contractor shall document all attendess with date of attendance for all meetings held. Additional meetings shall be conducted for new personnel and when site conditions change. The training and meeting agenda shall include: methods of detecting and avoiding pollution; familiarization with statutory and contractual pollution standards; installation and care of devices, vegetative covers, and instruments required for monitoring purposes to ensure adequate and continuous environmental protection/pollution control; anticipated hazardous or toxic chemicals or wastes, and other regulated contaminants; recognition and protection of archaeological sites, artifacts, wetlands, and endangered species and their habitat that are known to be in the area.

3.12 POST CONSTRUCTION CLEANUP

The Contractor shall clean up all areas used for construction in accordance with Contract Clause: "Cleaning Up". The Contractor shall, unless otherwise instructed in writing by the Contracting Officer, obliterate all signs of temporary construction facilities such as haul roads, work area, structures, foundations of temporary structures, stockpiles of excess or waste materials, and other vestiges of construction prior to final acceptance of the work. The disturbed area shall be graded, filled and the entire area seeded unless otherwise indicated.

-- End of Section --

NOTICE OF TERMINATION TO CANCEL COVERAGE UNDER (NDPDES) GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY

NORTH DAKOTA DEPARTMENT OF HEALTH
DIVISION OF WATER QUALITY
DRAFT SFN 19146 (11/02)

Clear All Form Fields

FOR DEPT. USE ONLY

Date Received:____/____/____

GENERAL INFORMATION

Name of Construction Project			Permit Number
			NDR03 -
Name of Owner or Operator of Construction Project Which Received Authorization to Discharge	Contact Person		Telephone Number
Mailing Address	City	State	Zip Code

This Notice is to terminate coverage for all Small Construction Activity (see Part I.C of permit): ☐ YES ☐ NO

Clear Selections

There are special reporting requirements for Small Construction Activity in Part I.H and III.D of permit

LOCATION (for Large Construction Activity Only)

SITE LOCATION	Street			City		
	OR	1/4 1/4	Section	Township	Range	County
	OR	Latitude 0 I II		Longitude 0 I II		County

CERTIFICATION STATEMENT

I certify under penalty of law that for the construction project(s) and permit described above:

As of _____, disturbed soils at the identified site(s) have been finally stabilized, seventy percent restored vegetative coverage as compared to preexisting vegetation, and temporary erosion control measures have been removed, or that all storm water discharges associated with construction activity from the identified site, authorized by a NDPDES general permit have been eliminated.

I understand that by submitting this Notice of Termination, that I am no longer authorized to discharge storm water associated with construction activity by the general permit, and that discharging pollutants in storm water to waters of North Dakota is unlawful under North Dakota Century Code 61-28 where the discharge is not authorized by a NDPDES permit.

Return Completed Application to:

North Dakota Department of Health
Division of Water Quality
P.O. Box 5520
Bismarck, ND 58506-5520

Telephone: (701)328-5210

I certify I am familiar with NDCC 61-28-08 and with the information contained in this application. To the best of my knowledge and belief the information in this application is true, complete and accurate.

Printed Name of Applicant(s)	Title
Signature of Applicant(s)	Application Date

(Attach additional page if needed)

NOTICE OF INTENT TO OBTAIN COVERAGE UNDER NDPDES GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY

NORTH DAKOTA DEPARTMENT OF HEALTH
DIVISION OF WATER QUALITY
SFN 19145 (11/02)

Clear Entire Form

FOR DEPT. USE ONLY

Application No.

Date Received

GENERAL INFORMATION

Name of Owner or Operator of Construction Project Seeking Authorization to Discharge	Contact Person	Phone No.	
Mailing Address	City	State	Zip Code

Type of Owner or Operator: ☐ Developer/Builder ☐ General Contractor ☐ Municipality ☐ State of ND ☐ Federal ☐ Other (Specify):

This NOI is to obtain coverage under Small Construction Activity (see Part I.C of permit): ☐ YES ☐ NO

Clear Buttons

There are special reporting requirements for Small Construction Activity in Part III.D of permit

Name of Construction Project (Large Construction Activity only - see Part I.D of permit)

Brief Description of Construction Activity (Please fill out for **both** Small and Large Construction Activity)

LARGE CONSTRUCTION ACTIVITY INFORMATION

Names of Contractors Working at Site (if known)

1)

2)

3)

Project Start Date:

Estimated Completion Date:

Estimated Area of Total Disturbance in Acres

Facility Location						
	Street			City		
	OR	1/4 1/4	Section	Township	Range	County
	OR	Latitude o I II		Longitude o I II		County

Receiving Waters			
	☐ Natural Surface Drainage	Name or Description of Receiving Waters	
	OR ☐ Municipal Storm Sewer	Name of City	

Clear Buttons Above

SIGNATURE INFORMATION

RETURN COMPLETED APPLICATION TO:

North Dakota Department of Health
Division of Water Quality
1200 Missouri Ave., Rm. 203
PO Box 5520
Bismarck, ND 58506-5520

Telephone: 701-328-5210

I certify I am familiar with NDCC 61-28-08, and with the information contained in this application. To the best of my knowledge and belief, the information in this application is true, complete, and accurate.

Printed Name of Applicant(s)	Title
Signature of Applicant(s)	Application Date

(Attach additional pages if needed)

NORTH DAKOTA DEPARTMENT OF HEALTH
NDPDES PROGRAM

Construction
Storm Water Pollution Prevention Plan
Guidance Forms

CONTENTS

1. PROJECT DESCRIPTION (SF 19388)
2. SITE MAP DEVELOPMENT
3. VEGETATIVE/STRUCTURAL PRACTICES (SF 19389)
4. OTHER BEST MANAGEMENT PRACTICES (SF 19390 and SF 19390-2)
5. SIGNIFICANT MATERIALS (SF 19387)
6. SIGNATORY CERTIFICATION (SF 19137)
7. SITE INSPECTION RECORD (SF 19391)

PROJECT DESCRIPTION
North Dakota Department of Health
Division of Water Quality

SFN 19388 (11/02)

Project Name	
Project Type	
Project Location	
Estimate of Project Size	

Description of the Nature of Activity

Description of Existing Soils, Fill Material, and Erodibility of Such Soils

Proposed Timetable for Construction Activities

Name of Receiving Waters

SITE MAP DEVELOPMENT

The site map should be suitably scaled and drawn to show the following required information:

MAP FEATURES

1) Construction site boundaries and area(s) of soil disturbance.

2) The location of springs, streams, wetlands, and other surface waters.

3) The location of areas used for storage of building materials, soils, or waste materials.

4) The locations of proposed and existing stormwater controls.

5) Stormwater runoff/run on drainage patterns.

6) Section, township, range, or lines of latitude and longitude.

BEST MANAGEMENT PRACTICES FOR EROSION AND SEDIMENT CONTROL
NORTH DAKOTA DEPARTMENT OF HEALTH
DIVISION OF WATER QUALITY
SFN 19389 (09/99)

STRUCTURAL PRACTICES:

- ○ Terraces/Contours
- ○ Pipe Slope Drains
- ○ Straw Bale Dikes
- ○ Silt Fences
- ○ Infiltration Trenches or Basins
- ○ Earth Dikes
- ○ Rock Outlet Protection
- ○ Check Dams
- ○ Drain Inlet Protection
- ○ Brush Barriers
- ○ Temporary Drain Diversion
- ○ Drainage Swales
- ○ Sediment Traps
- ○ Temporary Sediment Basins
- ○ Subsurface Drains
- ○ Retaining Walls

Clear Selections

Additional Practices:

NONSTRUCTURAL PRACTICES:

- ○ Temporary Seeding
- ○ Mulching
- ○ Filter Strips
- ○ Erosion Blankets
- ○ Permanent Seeding
- ○ Grassed Waterways
- ○ Tree Planting
- ○ Sod Stabilization

Clear Selections

Additional Practices:

OTHER BEST MANAGEMENT PRACTICES
Description of sediment tracking reduction and sediment recovery methods
NORTH DAKOTA DEPARTMENT OF HEALTH
DIVISION OF WATER QUALITY
SFN 19390 (11/02)

Description of Methods to Reduce Sediment Tracking:

Description of Methods for Recovering Sediments:

Description of Methods for Handling and Disposing of Contaminated Soils:

OTHER BEST MANAGEMENT PRACTICES
Spill Prevention methods, post construction controls and site inspections/maintenance
NORTH DAKOTA DEPARTMENT OF HEALTH
DIVISION OF WATER QUALITY
SFN 19390-2 (11/02)

Description of Spill Prevention and Response Procedures:

Description of Post Construction Controls:

Description of Procedures for Site Inspections and Maintenance

SIGNIFICANT MATERIALS
NORTH DAKOTA DEPARTMENT OF HEALTH
DIVISION OF WATER QUALITY

SFN 19387 (11/02)

INSTRUCTIONS: Based on your site's material inventory, provide the following information. For the definition of "significant materials," see Part VI of the permit. The **location** of the significant materials should be indicated on the site map.

MATERIAL	QTY KEPT ONSITE	STORAGE METHOD	DISPOSAL METHOD	PROCESSED ONSITE?	POLLUTION PREVENTION MEASURES
ex. Diesel Fuel	ex. 500 gallons	ex. Berm surrounding tank	ex. Using ND DoH Waste Management Guidelines	ex. NO	ex. Berm constructed around tank to capture any spills or leaks. Employees have been trained to prevent spills during fueling process and to contact management if a spill occurs.
				No	
				No	
				No	
				No	
				No	
				No	
				No	

SIGNATORY CERTIFICATION
North Dakota Department of Health
Division of Water Quality
SFN 19137 (11/02)

For Department Use Only

Permit Number:

INSTRUCTIONS: The following statement shall be signed by a responsible corporate officer, general partner, principle executive officer or ranking elected official. The statement may be signed by a duly authorized representative of the person above in accordance with Part IV-E of the permit.

CERTIFICATION

"I _____, certify under penalty of law that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Printed Name of Applicant		Title	
Signature of Applicant		Date	

ADDITIONAL SIGNATURES

INSTRUCTIONS: If more than one signature is required on the Stormwater Pollution Prevention Plan, use the space provided.

Date	Printed Name	Signature	Title	Company Name

Permit No.: NDR03-0000

Effective Date: October 1, 1999

Mod. Effective Date: March 10, 2003

Expiration Date: September 30, 2004

AUTHORIZATION TO DISCHARGE UNDER THE

NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with Chapter 33-16-01 of the North Dakota Department of Health rules as promulgated under Chapter 61-28 (North Dakota Water Pollution Control Act) of the North Dakota Century Code,

facilities both qualifying for and satisfying the requirements identified in Part I of this permit

are authorized to discharge storm water associated with **CONSTRUCTION ACTIVITY**

to waters of the state

in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I-VI, hereof.

This permit and the authorization to discharge shall expire at midnight,

September 30, 2004.

_____
Dennis R. Fewless, Director
Division of Water Quality

_____
Date

PART I - PERMIT COVERAGE

A. Permit Area

This permit applies to all areas within the jurisdiction of the state of North Dakota

B. Eligibility and Limitations

1. Storm Water Discharges Covered by this Permit

This permit applies to all new and existing discharges of storm water from construction activity involving land disturbance of equal to or greater than one acre. This includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one acre. Construction activity involves any of the following:

a. Construction activity including: clearing, grading, and excavation activities.
b. Examples of eligible construction projects include but are not limited to: road building/rebuilding, site development, housing subdivision development, utility trenching, etc.
c. Areas that are dedicated to producing earthen materials (such as soils, sand and gravel) for use at a construction site(s) as approved by the Department.

2. Storm Water Discharges *Not* Covered by this Permit

The following are not provided coverage under this permit:

a. Storm water discharges associated with industrial activity from any source other than construction activities of those approved operations as in Part I.B.1.b.
b. Storm water discharges associated with mining activities.
c. Storm water discharges associated with industrial activity from discharge points subject to existing effluent limitations guidelines.
d. Storm water discharges that the Department has shown to be contributing to a violation of a water quality standard.

C. Small Construction Activity Coverage

Small construction activity involves land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

1. Notice of Intent (NOI)

An operator must submit one single NOI form to the Department to obtain coverage for storm water discharges from all of their small construction sites. An operator is the individual who has day to day supervision and control of activities occurring at the construction sites. This can be the owner, developer, the general contractor or, in some circumstances, the agent of one of these parties.

2. Contents of the NOI

The NOI for small construction activity shall contain, at a minimum, the following information:

a. Name and mailing address of the owner or operator.
b. Contact name and phone number.
c. A brief description of the construction activity type.
d. The signature of the applicant(s), signed in accordance with Part IV.E of this permit.

3. Deadlines

The NOI for small construction activity shall be submitted to the Department prior to the start of construction.

4. Submittal

Completed NOIs shall be submitted, by mail or hand delivery, to:

North Dakota Department of Health
Division of Water Quality
1200 Missouri Avenue
PO Box 5520
Bismarck, ND 58506-5520

Operators of small construction activity shall submit an Annual Location Record (see Part III.D) to the Department by January 31.

D. Large Construction Activity Coverage

Large construction activity involves land disturbance of equal to or greater than 5 acres. Large construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than five acres.

1. Notice of Intent (NOI)

The operator of large construction activity shall submit an NOI and Storm Water Pollution Prevention (SWPP) Plan (see Part II.C.3) to obtain coverage for storm water discharges for each construction project. An operator is the individual who has day to day supervision and control of activities occurring at the construction site. This can be the owner, developer, the general contractor or, in some circumstances, the agent of one of these parties.

2. Contents of the NOI

The NOI for large construction activity shall contain, at a minimum, the following information:

a. Name and mailing address of the owner or operator.
b. Contact name and phone number.

c. The type of owner or operator of the construction site (federal, state, private, or other entity).
d. Name of construction project
e. A brief description of the construction activity.
f. List of contractors/subcontractors working at the site (if known).
g. Construction project's SIC code.
h. The anticipated starting date and the anticipated date of completion for the project.
i. The estimated area of total disturbance in acres.
j. County and location of the construction site, including latitude and longitude or township, range, section, and 1/4 section.
k. Name of receiving water(s) or the name of the receiving municipal storm sewer system and receiving water(s).
l. The signature of the applicant(s), signed in accordance with Part IV.E of this permit.

3. Deadlines

The NOI and SWPP Plan for large construction activity shall be submitted to the Department 30 days prior to the start of construction.

4. Submittal

Completed **NOIs** and **SWPP Plans** (see Part II.C) shall be submitted, by mail or hand delivery, to:

North Dakota Department of Health
Division of Water Quality
1200 Missouri Avenue
PO Box 5520
Bismarck, ND 58506-5520

E. Permit Certification

1. Automatic Coverage

If the applicant does not receive a request for additional information or a notification of denial from the Department within 10 days of receipt of the application by the Department, authorization to discharge in accordance with the conditions of this permit shall be deemed granted.

2. Request for Additional Information

The Department shall have the right to request additional data and/or deny the authorization for any particular discharge.

3. Individual or Alternative General Permits

a. The Department may, at any time and by written notification only, require any person authorized by this permit to apply for and obtain either an individual NDPDES permit or to seek coverage under an alternative NDPDES general permit.

b. Any person covered by this general permit may request to be excluded from such coverage by either applying for an individual NDPDES permit or filing a Notice of Intent to be covered under an alternative NDPDES general permit.

c. When an individual NDPDES permit is issued to a person otherwise subject to this permit or the person is approved for coverage under an alternative NDPDES general permit, the applicability of this permit to the individual permittee is automatically terminated upon the effective date of the individual permit or the date of approval for coverage under the alternative general permit.

d. When an individual NDPDES permit is denied to a person otherwise subject to this permit, or the person is denied for coverage under an alternative NDPDES general permit, the applicability of this permit remains in effect, unless otherwise specified by the Department.

4. Local Authority

This permit does not preempt or supersede the authority of local agencies to prohibit, restrict, or control discharges of storm water to storm sewer systems or other water courses within their jurisdiction.

F. Continuation of Coverage

Facilities covered under this permit can continue coverage under the renewed permit, provided a satisfactory request is made. Any request to retain coverage under a renewal of this permit shall be made in writing to the Department at least 15 days prior to the expiration date of this permit. If requested by the Department, a new NOI shall be submitted.

G. Transfer of Ownership or Control

1. Coverage under this permit may be transferred to a new permittee if the existing and new permittees notify the Department in writing, at least 48 hours before the transfer of ownership or control; and the notice includes a written agreement between the existing and new permittees containing a specific date of transfer or permit responsibility, coverage and liability between them. If requested by the Department, an NOT shall be submitted by the existing permittee and an NOI submitted by the new permittee.

2. The new owner or operator must comply with all regulations in this permit and with all provisions of the existing SWPP Plan until such time as the existing SWPP Plan is amended or replaced by a new SWPP Plan. If the personnel responsible for implementing the SWPP Plan change, these changes must be amended to the SWPP Plan within 30 days of transfer of ownership or control.

H. Notice of Termination (NOT)

1. Final Stabilization

Final stabilization is reached when all construction activities that are authorized by this permit have been completed, and uniform vegetative cover has been established with a

density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed.

2. Notice of Termination (NOT) for Small Construction Activity

Operators of small construction activity (see Part I.C) are not required to submit NOTs for their individual small construction sites, however, final stabilization is required on all sites. If an operator ceases all of its small construction activity and has submitted Annual Location Records (see Part III.D) that certify final stabilization has been completed on its small construction sites, an NOT must be submitted to end permit coverage for small construction activity.

3. Content of NOT for Small Construction Activity

a. Permit number.
b. Name and mailing address of the owner or operator.
c. Contact name and phone number.
d. Certification that all small construction activity has been finally stabilized.
e. Signature of the applicant(s), signed in accordance with Part IV.E of this permit.

4. Notice of Termination (NOT) for Large Construction Activity

When a site has been finally stabilized, an NOT shall be submitted to the Department.

5. Content of NOT for Large Construction Activity

The NOT shall contain, at a minimum, the following information:

a. Permit number.
b. Name of construction site.
c. Name and mailing address of the owner or operator.
d. Contact name and phone number.
e. County and location of the construction site, including latitude and longitude or township, range, section, and 1/4 section.
f. Certification that the site has been finally stabilized.
g. Signature of the applicant(s), signed in accordance with Part IV.E of this permit.

6. Submittal

Completed **NOTs** shall be submitted, by mail or hand delivery, to:

North Dakota Department of Health
Division of Water Quality
1200 Missouri Avenue
PO Box 5520
Bismarck, ND 58506-5520

PART II - SPECIAL CONDITIONS

A. Prohibition of Non-Storm Water Discharges

All discharges covered by this permit shall be composed entirely of storm water. The discharge of materials other than storm water must be identified as a potential source of pollution in the SWPP Plan (Part II.C.3). Unless otherwise determined by the Department, discharges of other than storm water must be in compliance with an appropriate NDPDES permit issued for the discharge.

B. Releases in Excess of Reportable Quantities

This permit does not relieve the permittee of the reporting requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302. Any release of a hazardous substance, including a release in a storm water discharge, must be reported to the agencies identified in Part IV.F. The discharge of hazardous substances in storm water discharges shall be minimized in accordance with the applicable SWPP Plan for the facility. Should a reportable quantity release occur, the SWPP Plan shall be revised to prevent the recurrence of such a release.

C. Storm Water Pollution Prevention Plans

All facilities covered by this permit shall prepare and implement a Storm Water Pollution Prevention (SWPP) Plan that is subject to Department approval. Guidance forms for preparing a SWPP Plan are located on the website **http://www.health.state.nd.us/wq/Storm/Construction/ConstructionHome.htm** or can be obtained from the Department. The main objective of the plan shall be to identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with construction activity; and to describe Best Management Practices (BMPs) which will be used to reduce the pollutants in the storm water discharges associated with construction activity. The implementation of these objectives will be used to meet the terms and conditions of this permit.

1. Plan Preparation and Implementation Deadlines

   a. SWPP Plans for large construction activity (see Part I.D) shall be submitted with the NOI. It is not necessary for operators of small construction activity (see Part I.C) to submit their SWPP Plans to the Department, unless requested in writing by the Department.

      Implementation of the plan shall be at the start of construction. The SWPP Plan may be submitted and/or implemented at later dates only upon written request by the permittee showing just cause and subsequent written approval by the Department.

   b. SWPP Plans approved and implemented under the previous version of this permit shall remain in effect under this permit. Operations covered under an existing SWPP Plan shall amend the SWPP Plan as described in Part II.C.2.d of this permit.

c. If the permittee must also operate under an approved state or local sediment and erosion control plan, or any other storm water management plan, it will be the permittee's responsibility to ensure that the SWPP Plan for this permit complies with all other required plans. A SWPP Plan is not a substitute for a storm water management plan developed under other regulatory programs. It is acceptable for the plan to reflect the storm water management measures developed under other regulatory programs and to incorporate the applicable portions of such programs by reference.

d. The permittee shall amend the SWPP Plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the water of the state, or if the SWPP Plan proves to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity.

2. <u>SWPP Plan Contents</u>

Key elements for SWPP Plans shall include, at a minimum, the following information:

a. *Site Description*

A site description shall contain, at a minimum, the following information:

i) A description of the nature of the construction activity.
ii) The proposed timetable for major activities.
iii) Estimates of the total area of the site, and the area of the site that is expected to undergo clearing, excavation, or grading.
iv) A description of the fill material to be used, the existing soils at the site, and the erodibility of such soils.
v) The name of any receiving water(s) and the size, type and location of any outfall or; for discharges to a municipal separate storm sewer, the name of the municipal owner of the system, the location of the storm sewer discharge, and the name of the ultimate receiving waters.

b. *Site Map*

A site map that indicates, at a minimum, the following information:

i) Construction site boundaries and area of soil disturbance
ii) The location of springs, streams, wetlands, and other surface waters
iii) The location of areas used for storage of building materials, soils, or wastes.
iv) The locations of proposed and existing storm water controls
v) Storm water runoff drainage patterns
vi) Township, range, section or lines of latitude and longitude

c. *Significant Material Inventory*

The location and description of any potential pollution sources, such as vehicle fueling, fertilizers or chemicals, etc. Generally, significant materials are raw materials, finished products, and byproducts. The term also includes materials

necessary for an operation which have the potential to be released with storm water. The description should identify methods of storage, disposal, and outdoor processing involving significant materials.

d. *Best Management Practices (BMPs)*

The plan shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMPs. The description of BMPs shall include the following components:

i) Erosion and Sediment Controls

a) Nonstructural

A description of nonstructural practices designed to preserve existing vegetation where practicable and re-vegetate open areas as soon as practicable after construction activity ceases. In developing vegetative practices, the permittee shall consider: temporary and permanent seeding, mulching, sod stabilization, filter strips, grassed waterways, erosion blankets, geotextiles, preservation of mature vegetation and tree or shrub planting.

b) Structural

A description of structural practices which indicates how, to the degree practicable, the permittee will divert flows from exposed soil, store flows, or otherwise limit runoff from exposed areas of the site. In developing structural practices, the permittee shall consider the relevance of: straw bale dikes, silt fences, earth dikes, brush barriers, drainage swales, check dams, subsurface drains, pipe slope drains, rock outlet protection, drain inlet and outlet protection, temporary drain diversion, sediment traps, temporary sediment basins, infiltration trenches or basins, and retaining walls.

ii) Other Controls

a) A description of methods to reduce the tracking of sediment onto public or private roads.

b) If applicable, a description of methods for handling and disposing of contaminated soils.

c) A description of methods for recovering sediments.

d) A description of spill prevention and response procedures for areas where potential spills can occur.

e. *Post-Construction Controls*

A description of the post-construction control measures to be implemented until final stabilization is achieved.

f. *Inspection and Maintenance*

A description of procedures which will be used to inspect and maintain, in good and effective operating condition, the storm water controls identified in the SWPP Plan. Site inspections must be in accordance with Part III of this permit.

g. *Signature*

All SWPP Plans must be signed in accordance with Part IV.E of this permit.

D. **Additional Terms and Conditions**

Storm water discharges from construction sites shall not cause pollution, contamination, or degradation to waters of the state.

1. Visible or measurable erosion which leaves the construction site is prohibited. Visible or measurable erosion is defined as:

   a. Deposits of mud, dirt, sediment, or similar material exceeding one-half cubic foot in volume in any area of 100 square feet or less on public or private streets, adjacent property, or into the storm and surface water either by deliberate actions or as a result of erosion; or

   b. Evidence of concentrated flows of water over bare soils, turbid or sediment-laden flows, or evidence of on-site erosion on bare soil slopes, where runoff of water is not filtered or captured on the site using the techniques in the approved SWPP Plan; or

   c. Earth slides, mud flows, earth sloughing, or other earth movement which leaves the property.

2. If any measurable quantity of sediment leaves the site because of structural failure or lack of design capacity of the BMPs, the sediment shall be placed back on the site or properly disposed of, as soon as is prudent. Under no conditions shall the sediment be washed into the storm sewers or drainage ways.

3. Concrete wash water shall not be discharged to waters of the state or to storm sewer systems.

4. Bulk storage structures for petroleum products and other chemicals shall have adequate protection so as to contain all spills and prevent any spilled materials from entering waters of the state.

5. No chemicals are to be added to the discharge unless permission for the use of a specific chemical is granted by the Department. In granting the use of such chemicals, special conditions and monitoring may need to be addressed through an individual NDPDES permit or an alternative NDPDES general permit.

6. All storm water discharges must comply with the requirements, policies, or guidelines, of municipalities and other local agencies. Any discharges of storm water to storm drainage systems or other water courses under their jurisdiction, including applicable requirements in municipal storm water management programs developed to comply with NDPDES permits, must comply with their local requirements.

PART III - EFFLUENT LIMITATIONS, MONITORING, RECORDING, AND REPORTING REQUIREMENTS

A. Effluent Limitations

The quality of storm water discharges associated with construction activity shall reflect the best which is attainable through the proper implementation of all items in the SWPP Plan for the construction site.

B. Monitoring Requirements

The permittee shall inspect the construction site to ensure that the storm water controls identified in the SWPP Plan are effective and properly maintained. The construction site perimeter, disturbed areas, and areas used for material storage shall be inspected for evidence of, or the potential for, erosion, sediment accumulation, sediment material residue and spills. The following guidelines shall be used for monitoring the effectiveness of the SWPP Plan:

1. Inspection Frequency:

   a. Large Construction Activity

      Inspections shall be performed by or under the direction of the permittee at least once every 7 calender days and within 24 hours after any storm event of greater than 0.50 inches of rain per 24-hour period. The permittee shall have the option of maintaining a rain gauge at their site or utilizing the nearest National Weather Service precipitation gauge station. Any gauge station used shall be located within 10 miles of the storm water discharge.

   b. Small Construction Activity

      Inspections shall be performed by or under the direction of the permittee at least once every 14 calendar days and within 24 hours after any storm event of greater than 0.50 inches of rain per 24-hour period. The permittee shall have the option of maintaining a rain gauge at their site or utilizing the nearest National Weather Service precipitation gauge station. Any gauge station used shall be located within 10 miles of the storm water discharge.

2. During storm events or periods of snow melt, when runoff occurs daily, all SWPP Plan controls shall be inspected by or under the supervision of the permittee daily.

3. Storm water runoff discharges shall be visibly monitored at the above frequency to evaluate the effectiveness of the SWPP Plan controls. If any measurable quantities of sediment are leaving the property, corrective action shall be taken as soon as is prudent to reduce the discharge of sediments.

4. There may be times when the performance of the site inspection may not be practical during an inspection period. Adverse climatic conditions, such as flooding, high winds, tornadoes, electrical storms, etc., or impracticable climatic conditions, such as drought, extended frozen conditions, etc., may prohibit inspections. Should this occur, the permittee must make a record of the description of why the inspection(s) could not be performed in lieu of the actual inspection data. Any available documentation of the events which did not allow for the inspection should also be available.

C. **Recording Requirements**

Inspection results shall be summarized and recorded on a Site Inspection Record (SIR). The SIRs shall be maintained on-site, in accordance with Part IV.D of this permit. The SIR shall contain, at a minimum, the following information:

1. The date and time of inspection.
2. The name of the person performing the inspection.
3. The date and duration (in hours) of the storm event.
4. The rainfall measurements or estimates (in inches) of the storm event.
5. The duration of time between this event and the end of the most recent storm event which was 0.50 inches or greater in precipitation.
6. All incidents of erosion, sediment accumulation, material residue, or spills shall be documented and noted on the SIR. The report shall include the location and description of the incident, estimated quantity of material or size of area affected, and a brief explanation of potential cause and remedial action taken.
7. Any measurable quantities of sediment released off the site, shall be recorded with a brief explanation as to the measures taken to prevent future releases as well as any measures taken to clean up the sediment that has left the site.
8. If no storm event occurs during an inspection period, “no discharge” shall be recorded on the SIR.

D. **Annual Location Record Report - (Small Construction Activity only)**

Operators of Small Construction Activity shall maintain a Location Record that shows the locations they operated small construction activity.

1. Contents of the Location Record

The Location Record shall contain the following:

a. Permit number
b. Name and mailing address of the owner or operator
c. Name of each small construction site
d. Location of each site (street address, latitude and longitude, or legal land description of township, range, section, and 1/4 section)
e. Start date of each site
f. The estimated area of total disturbance in acres of each site
g. Status of each site (in progress, grading complete, final stabilization date)

2. Submittal

A copy of the Annual Location Record shall be submitted to the Department by January 31 of each year, covering the small construction sites operated during the preceding calendar year (January 1 through December 31). The report shall be submitted to the Department at the following address:

North Dakota Department of Health
Division of Water Quality
1200 Missouri Avenue
PO Box 5520
Bismarck, ND 58506-5520

PART IV - COMPLIANCE RESPONSIBILITIES

A. **Duty to Comply** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give the Department advance notice of any planned changes at the permitted facility or of any activity which may result in permit noncompliance.

B. **Operation and Maintenance** The permittee shall at all times maintain in good working order, and operate as efficiently as possible, all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit and with the requirement of the SWPP Plans. If necessary to achieve compliance with the conditions of this permit, this shall include the operation and maintenance of backup or auxiliary systems.

C. **Duty to Provide Information** The permittee shall furnish to the Department, upon request, copies of records required to be kept by this permit. When a permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or any report, it shall promptly submit such facts or information.

D. **Records Retention** All records and information (including calibration and maintenance) required by this permit shall be kept for at least three years or longer if requested by the Department or EPA.

E. **Signatory Requirements** All applications, reports, or information submitted to the Department shall be signed and certified by the permittee in accordance with the following criteria:

1. All permit applications shall be signed by a responsible corporate officer, a general partner, or a principal executive officer or ranking elected official, in addition to contractors and subcontractors involved in the construction activity or SWPP Plan.

2. All reports required by the permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

   a. The authorization is made in writing by a person described above and submitted to the Department; or

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

3. If an authorization under Part IV.E.2 is no longer accurate for any reason, a new authorization satisfying the above requirements must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

F. **Immediate Notification** The permittee shall report any noncompliance of discharge which may seriously endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstance. The report shall be made to the EPA, Region VIII, National Emergency Response Center, at 1-800-424-8802 and the State of North Dakota, Division of Emergency Management, 1-800-472-2121. In addition, a written submission to both the Department and EPA shall be provided within five days of the time that the permittee became aware of the circumstances. The submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; the estimated time noncompliance is expected to continue if it has not been corrected; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

G. **Bypassing** Any bypass is prohibited except where unavoidable to prevent loss of life, personal injury, or severe property damage, and there were no feasible alternatives to the bypass. The permittee shall provide notification of unanticipated bypasses as may be required by Part IV.F, Immediate Notification. If, for other reasons, a bypass is considered necessary, a request to bypass shall be submitted, at least 15 days in advance if possible, to the Department. No bypass of this type shall occur until permission has been obtained from the Department.

H. **Upset Conditions** An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of the following paragraph are not met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

1. An upset occurred and the permittee can identify its cause(s);

2. The permitted facility was, at the time, being properly operated;

3. The permittee submitted notice of the upset as may be required under Part IV.F, Immediate Notification; and

4. The permittee complied with any remedial measures required under Part IV.I, Duty to Mitigate.

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. **Duty to Mitigate** The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. The permittee, at the Department's request, shall provide accelerated or additional monitoring as necessary to determine the nature and impact of any discharge.

J. **Removed Materials** Collected screening, grit, solids, sludge, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner to prevent any pollutant from entering waters of the state or creating a health hazard.

PART V - GENERAL REQUIREMENT

A. **Right of Entry** The permittee shall allow Department and EPA representatives, at reasonable times and, if requested, upon the presentation of credentials, to inspect any facilities or equipment (including monitoring and control equipment), to sample discharges, and to have access to and copy any records required to be kept by this permit. For facilities which discharge to a municipal or other separated storm sewer, this shall also pertain to authorized representatives of the municipal operator or the separate storm sewer receiving the discharge.

B. **Availability of Reports** Except for data determined to be confidential under 40 CFR, Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

C. **Transfers** This permit is not transferable except upon the filing of a Statement of Acceptance by the new party and subsequent Department approval. The Department may require the new operator to apply for and obtain an individual NDPDES permit as stated in Part I.G. The current permit holder should inform the new controller, operator, or owner of the existence of this permit and also notify the Department of the possible change.

D. **New Limitations or Prohibitions** The permittee shall comply with any effluent standards or prohibitions established under Section 306(a), Section 307 (a), of Section 405 of the Act for any pollutant (toxic or conventional) present in the discharge or removed substances within the time identified in the regulations, even if the permit has not yet been modified to incorporate the requirements.

E. **Permit Actions** This permit may be modified, revoked and reissued, or terminated for cause. Also, if there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with construction activity covered by this permit, the owner or operator of such discharge may be required to obtain an individual permit or coverage under an alternative general permit in accordance with Part I.E of this permit. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit conditions.

F. **Need to Halt or Reduce** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

G. **State Laws** Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation preserved under Section 510 of the Act.

H. **Oil and Hazardous Substance Liability** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation preserved under Section 311 of the Act.

I. **Property Rights** The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges; nor does it authorize any injury to private property or any invasion of personal rights; nor any infringement of federal, state, or local laws or regulations.

J. **Severability** The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

PART VI - DEFINITIONS

"the Act" means the Clean Water Act.

"BMP" or "Best Management Practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

“Bypass" means the intentional diversion of waste streams from any portion of a treatment facility."Construction" means any activity associated with construction, including but not limited to: clearing, grading, and excavation.

"Department" means the North Dakota State Department of Health, Division of Water Quality.

"Grab" sample, for monitoring requirements, means a single "dip and take" sample collected at a representative point in the discharge stream.

“Large Construction Activity” means land disturbance of equal to or greater than 5 acres. Large construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than five acres.

“Non-storm water discharges” means discharges other than storm water. The term includes both process and non-process sources. Process waste water sources that require a separate NDPDES permit include, but are not limited to industrial processes, domestic facilities and cooling water. Non-storm water sources that may be addressed in this permit include, but are not limited to: fire hydrant flushing and testing, potable water line flushing, infrequent building and pavement washdowns without detergents, uncontaminated foundation drains, springs, lawn watering and air conditioning condensate.

"Severe property damage" means substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

"Significant spills" includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or Section 102 of CERCLA (see 40 CFR 302.4).

“Small Construction Activity” means land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

“Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NDPDES program. For the categories of industries identified in subparagraphs (i) through (x) of this subsection, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in subparagraph (xi), the term includes only storm water discharges from all areas listed in the previous sentence (except access roads) where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by products, or industrial machinery <u>are exposed to storm water</u>. For the purposes of this paragraph, material handling activities include: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally or municipally owned or operated that meet the description of the facilities listed in this paragraph [(i)-(xi)] include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR, Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this paragraph);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry), including active or inactive mining operations [except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(1)], and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with, or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection), including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42, 44, and 45, which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i) - (vii) or (ix) - (xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility, with design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading, and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 31 (except 311), 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25 [and which are not otherwise included within categories (i) - (x)].

“Storm water discharge associated with small construction activity” means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal

to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

(ii) Any other construction activity designated by EPA or the Department, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the state.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Waters of the state": Any and all surface waters that are contained in or flow in or through the state of North Dakota as defined in NDCC 61-28-02. This definition includes all water courses, even if they are usually dry.

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SECTION 01400

SPECIAL SAFETY REQUIREMENTS
05/00 Rev 12/01

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

CODE OF FEDERAL REGULATIONS (CFR)

29 CFR 1926	Safety and Health Regulations for Construction

ENGINEERING MANUALS (EM)

EM 385-1-1	(1996 and Changes) Safety and Health Requirements Manual

1.2 SUMMARY

1.2.1 General

This section provides guidelines for preparation of accident prevention plans, and to implement the accident prevention clause (this specification) and EM 385-1-1, Safety and Health Requirements Manual. The U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1 is available from U.S. Government bookstores operated by the Government Printing Office and a copy is included on the CD-ROM issued with this solicitation. Changes to EM 385-1-1 applicable to this contract include only those revisions posted at the following website (all revisions up to the time this solicitation is issued): http://www.hq.usace.army.mil/soh/hqusace_soh.htm ("Changes to EM"). U.S. Government bookstores are located in most major cities including Milwaukee, Chicago, Kansas City, Denver, and Pueblo, Colorado.

1.3 PRECONSTRUCTION CONFERENCE

See Contract Clause "PRECONSTRUCTION CONFERENCE". A preconstruction conference will be scheduled prior to beginning of site work. Requirements relative to planning and administration of the overall safety program will be discussed.

1.4 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Accident Prevention Plan; G-AO

The written site-specific Accident Prevention Plan.

SD-07 Certificates

Qualifications; G-AO.

A written report providing evidence of qualifications for personnel, facilities and equipment assigned to the work.

1.5 ACCIDENT PREVENTION PLAN

The Contractor shall submit, prior to the start of on site construction activity, a proposed accident prevention plan which shall be the accident prevention policy to be followed by all of the Contractor's and subcontractor's personnel and supervisory staff during performance of the work.

1.5.1 Requirements

The proposed plan shall be developed after a careful analysis of the work involved and shall be tailored specifically to the conditions of this project. The Contractor's accident prevention plan shall contain, as a minimum, the following general information or procedures for the activity indicated. The Contractor shall submit his plan for review and acceptance prior to commencing work.

1.5.1.1 Responsible Individual(s)

The Contractor shall designate an onsite employee as the individual responsible for insuring the accident prevention plan is implemented and enforced.

1.5.1.2 Subcontractor Supervision

Explain procedures to assure that subcontractor(s) fully comply with the accident prevention plan.

1.5.1.3 Indoctrination of New Employees

The plan shall include provisions for advising workers of the purpose of the accident prevention plan, specific hazards on the job and precautions to be taken, emergency procedures, information concerning tool box safety meetings, required protective equipment, cleanup rules and location of company safety rules (posting or handout).

1.5.1.4 Tool Box Safety Meetings

Hold weekly "Tool Box" safety meetings. Timely safety subjects shall be determined by a responsible individual. Employees will be informed of time, location, who will conduct, and subject. Identify procedures for including subcontractors. The Contractor shall provide a copy of the Weekly Tool Box Meeting and Monthly Supervisor's Safety Meeting to the Contracting Officer.

1.5.1.5 Fire Prevention and Protection

Identify source of fire protection. Insure adequate fire extinguishers,

water barrels, or other fire-fighting equipment is located on site. Explain prevention activities to include storage areas and special hazards such as welding and use of flammable liquids, and other special hazards.

1.5.1.6 Housekeeping

Daily cleanup of all debris and waste materials is required. Adequate disposal containers should be placed strategically around the site. Debris shall be removed on a regular basis. Explain procedures that include use of barrels, dumpsters, trash chutes, etc.

1.5.1.7 Mechanical Equipment Inspection

All mechanical equipment (trucks, cranes, forklifts, backhoes, graders, etc.) shall be inspected prior to use and at fixed intervals throughout the life of the contract. Explain how inspections will be accomplished (frequency, by whom, and records to be kept).

1.5.1.8 First Aid and Medical Facilities

First aid facilities shall be made available on the job site. Arrangements for emergency medical attention shall be made prior to start of work. All emergency numbers (doctor, hospital, ambulance, fire department) shall be posted at the project superintendent's office.

1.5.1.9 Sanitation

Include provisions for toilet facilities, drinking water and washing facilities. A sufficient number of toilet facilities as specified in EM 385-1-1 shall be provided unless permission is granted to use existing facilities (portable chemical are authorized). Insure safe drinking water and individual cups are available. For the projects where corrosive or toxic materials are used, separate washing facilities are required.

1.5.1.10 Safety Promotions

The Contractor shall promote accident prevention. Identify method (posters, awards etc.).

1.5.1.11 Accident Reporting

All accidents (employee injuries, vehicle, building, or equipment damage etc.) regardless of their severity, shall be reported to the onsite government representative or to the area engineer, who in turn will advise the Contractor of forms to be submitted and timeframes.

1.5.1.12 Job Hazard Analysis

When job situations change and it is necessary to alter safety requirements, a Job Hazard Analysis will be accomplished, documented, and added as an addendum to the Accident Prevention Plan. Each Job Hazard Analysis shall include, but not be limited to, a description of the work, probable hazards related to that work and positive precautionary measures to be taken to reduce or eliminate each hazard. An example of changing situations may be new subcontractors performing work such as earth moving, trenching, concrete work, roofing, electrical, masonry etc. The onsite government representative will determine the format and amount of detail required of the written plan.

1.6 EXCAVATION AND TRENCHING

The standards for excavation and trenching are outlined in 29 CFR 1926, Subpart P. These standards shall be followed in addition to those outlined in EM 385-1-1.

PART 2 PRODUCTS (NOT APPLICABLE)

PART 3 EXECUTION (NOT APPLICABLE)

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SECTION 01451A

CONTRACTOR QUALITY CONTROL
10/02; Omaha Revision 11/02

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)

ASTM D 3740	(2001) Minimum Requirements for Agencies Engaged in the Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction
ASTM E 329	(2000b) Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction

1.2 PAYMENT

Separate payment will not be made for providing and maintaining an effective Quality Control program, and all costs associated therewith shall be included in the applicable unit prices or lump-sum prices contained in the Bidding Schedule.

PART 2 PRODUCTS (Not Applicable)

PART 3 EXECUTION

3.1 GENERAL REQUIREMENTS

The Contractor is responsible for quality control and shall establish and maintain an effective quality control system in compliance with the Contract Clause titled "Inspection of Construction." The quality control system shall consist of plans, procedures, and organization necessary to produce an end product which complies with the contract requirements. The system shall cover all construction operations, both onsite and offsite, and shall be keyed to the proposed construction sequence. The site project superintendent will be held responsible for the quality of work on the job and is subject to removal by the Contracting Officer for non-compliance with the quality requirements specified in the contract. The site project superintendent in this context shall be the highest level manager responsible for the overall construction activities at the site, including quality and production. The site project superintendent shall maintain a physical presence at the site at all times, except as otherwise acceptable to the Contracting Officer, and shall be responsible for all construction and construction related activities at the site.

3.2 QUALITY CONTROL PLAN

The Contractor shall furnish for review by the Government, not later than 10 days after receipt of notice to proceed, the Contractor Quality Control (CQC) Plan proposed to implement the requirements of the Contract Clause titled "Inspection of Construction." The plan shall identify personnel, procedures, control, instructions, tests, records, and forms to be used. The Government will consider an interim plan for the first 30 days of operation. Construction will be permitted to begin only after acceptance of the CQC Plan or acceptance of an interim plan applicable to the particular feature of work to be started. Work outside of the features of work included in an accepted interim plan will not be permitted to begin until acceptance of a CQC Plan or another interim plan containing the additional features of work to be started.

3.2.1 Content of the CQC Plan

The CQC Plan shall include, as a minimum, the following to cover all construction operations, both onsite and offsite, including work by subcontractors, fabricators, suppliers, and purchasing agents:

a. A description of the quality control organization, including a chart showing lines of authority and acknowledgment that the CQC staff shall implement the three phase control system for all aspects of the work specified. The staff shall include a CQC System Manager who shall report to the project superintendent.

b. The name, qualifications (in resume format), duties, responsibilities, and authorities of each person assigned a CQC function.

c. A copy of the letter to the CQC System Manager signed by an authorized official of the firm which describes the responsibilities and delegates sufficient authorities to adequately perform the functions of the CQC System Manager, including authority to stop work which is not in compliance with the contract. The CQC System Manager shall issue letters of direction to all other various quality control representatives outlining duties, authorities, and responsibilities. Copies of these letters shall also be furnished to the Government.

d. Procedures for scheduling, reviewing, certifying, and managing submittals, including those of subcontractors, offsite fabricators, suppliers, and purchasing agents. These procedures shall be in accordance with Section 01330 SUBMITTAL PROCEDURES.

e. Control, verification, and acceptance testing procedures for each specific test to include the test name, specification paragraph requiring test, feature of work to be tested, test frequency, and person responsible for each test. (Laboratory facilities approved by the Contracting Officer shall be used.)

f. Procedures for tracking preparatory, initial, and follow-up control phases and control, verification, and acceptance tests including documentation.

g. Procedures for tracking construction deficiencies from identification through acceptable corrective action. These procedures shall establish verification that identified deficiencies have been corrected.

h. Reporting procedures, including proposed reporting formats.

i. A list of the definable features of work. A definable feature of work is a task which is separate and distinct from other tasks, has separate control requirements, and may be identified by different trades or disciplines, or it may be work by the same trade in a different environment. Although each section of the specifications may generally be considered as a definable feature of work, there are frequently more than one definable features under a particular section. This list will be agreed upon during the coordination meeting.

3.2.2 Acceptance of Plan

Acceptance of the Contractor's plan is required prior to the start of construction. Acceptance is conditional and will be predicated on satisfactory performance during the construction. The Government reserves the right to require the Contractor to make changes in his CQC Plan and operations including removal of personnel, as necessary, to obtain the quality specified.

3.2.3 Notification of Changes

After acceptance of the CQC Plan, the Contractor shall notify the Contracting Officer in writing of any proposed change. Proposed changes are subject to acceptance by the Contracting Officer.

3.3 COORDINATION MEETING

After the Preconstruction Conference, before start of construction, and prior to acceptance by the Government of the CQC Plan, the Contractor shall meet with the Contracting Officer or Authorized Representative and discuss the Contractor's quality control system. The CQC Plan shall be submitted for review a minimum of 10 calendar days prior to the Coordination Meeting. During the meeting, a mutual understanding of the system details shall be developed, including the forms for recording the CQC operations, control activities, testing, administration of the system for both onsite and offsite work, and the interrelationship of Contractor's Management and control with the Government's Quality Assurance. Minutes of the meeting shall be prepared by the Government and signed by both the Contractor and the Contracting Officer. The minutes shall become a part of the contract file. There may be occasions when subsequent conferences will be called by either party to reconfirm mutual understandings and/or address deficiencies in the CQC system or procedures which may require corrective action by the Contractor.

3.4 QUALITY CONTROL ORGANIZATION

3.4.1 Personnel Requirements

The requirements for the CQC organization are a CQC System Manager and sufficient number of additional qualified personnel to ensure safety and contract compliance. The Safety and Health Manager shall receive direction and authority from the CQC System Manager and shall serve as a member of the CQC staff. Personnel identified in the technical provisions as requiring specialized skills to assure the required work is being performed properly will also be included as part of the CQC organization. The Contractor's CQC staff shall maintain a presence at the site at all times during progress of the work and have complete authority and responsibility

to take any action necessary to ensure contract compliance. The CQC staff shall be subject to acceptance by the Contracting Officer. The Contractor shall provide adequate office space, filing systems and other resources as necessary to maintain an effective and fully functional CQC organization. Complete records of all letters, material submittals, show drawing submittals, schedules and all other project documentation shall be promptly furnished to the CQC organization by the Contractor. The CQC organization shall be responsible to maintain these documents and records at the site at all times, except as otherwise acceptable to the Contracting Officer.

3.4.2 CQC System Manager

The Contractor shall identify as CQC System Manager an individual within the onsite work organization who shall be responsible for overall management of CQC and have the authority to act in all CQC matters for the Contractor. The CQC System Manager shall be a construction person with a minimum of 5 years in related work. This CQC System Manager shall be on the site at all times during construction and shall be employed by the prime Contractor. The CQC System Manager shall be assigned as System Manager but may have duties as project superintendent in addition to quality control. An alternate for the CQC System Manager shall be identified in the plan to serve in the event of the System Manager's absence. The requirements for the alternate shall be the same as for the designated CQC System Manager.

3.4.3 CQC Personnel

A staff shall be maintained under the direction of the CQC system manager to perform all QC activities. The staff must be of sufficient size to ensure adequate QC coverage of all work phases, work shifts, and work crews involved in the construction. These personnel may perform other duties, but must be fully qualified by experience and technical training to perform their assigned QC responsibilities and must be allowed sufficient time to carry out these responsibilities. The QC plan will clearly state the duties and responsibilities of each staff member. Other technical specifications may specify individuals for maintaining quality control for specific areas of work. These individuals shall be under the direction of the CQC System Manager.

3.4.4 Organizational Changes

The Contractor shall maintain the CQC staff at full strength at all times. When it is necessary to make changes to the CQC staff, the Contractor shall revise the CQC Plan to reflect the changes and submit the changes to the Contracting Officer for acceptance.

3.5 SUBMITTALS AND DELIVERABLES

Submittals, if needed, shall be made as specified in Section 01330 SUBMITTAL PROCEDURES. The CQC organization shall be responsible for certifying that all submittals and deliverables are in compliance with the contract requirements.

3.6 CONTROL

Contractor Quality Control is the means by which the Contractor ensures that the construction, to include that of subcontractors and suppliers, complies with the requirements of the contract. At least three phases of

control shall be conducted by the CQC System Manager for each definable feature of the construction work as follows:

3.6.1 Preparatory Phase

This phase shall be performed prior to beginning work on each definable feature of work, after all required plans/documents/materials are approved/accepted, and after copies are at the work site. This phase shall include:

a. A review of each paragraph of applicable specifications, reference codes, and standards. Prior to the preparatory meeting for each definable feature of work, the Contractor shall provide all technical references (i.e. building codes, life safety codes, etc.) referenced in the project specifications for feature(s) of work being addressed at the preparatory meeting. These technical references shall be onsite and available for use by Contractor and Government personnel before the preparatory meeting is held and maintained until the feature(s) of work is/are accepted by the Government.

b. A review of the contract drawings.

c. A check to assure that all materials and/or equipment have been tested, submitted, and approved.

d. Review of provisions that have been made to provide required control inspection and testing.

e. Examination of the work area to assure that all required preliminary work has been completed and is in compliance with the contract.

f. A physical examination of required materials, equipment, and sample work to assure that they are on hand, conform to approved shop drawings or submitted data, and are properly stored.

g. A review of the appropriate activity hazard analysis to assure safety requirements are met.

h. Discussion of procedures for controlling quality of the work including repetitive deficiencies. Document construction tolerances and workmanship standards for that feature of work.

i. A check to ensure that the portion of the plan for the work to be performed has been accepted by the Contracting Officer.

j. Discussion of the initial control phase.

k. The Government shall be notified at least 48 hours in advance of beginning the preparatory control phase. This phase shall include a meeting conducted by the CQC System Manager and attended by the superintendent, other CQC personnel (as applicable), and the foreman responsible for the definable feature. The results of the preparatory phase actions shall be documented by separate minutes prepared by the CQC System Manager and attached to the daily CQC report. The Contractor shall instruct applicable workers as to the acceptable level of workmanship required in order to meet contract specifications.

3.6.2 Initial Phase

This phase shall be accomplished at the beginning of a definable feature of work. The following shall be accomplished:

a. A check of work to ensure that it is in full compliance with contract requirements. Review minutes of the preparatory meeting.

b. Verify adequacy of controls to ensure full contract compliance. Verify required control inspection and testing.

c. Establish level of workmanship and verify that it meets minimum acceptable workmanship standards. Compare with required sample panels as appropriate.

d. Resolve all differences.

e. Check safety to include compliance with and upgrading of the safety plan and activity hazard analysis. Review the activity analysis with each worker.

f. The Government shall be notified at least 48 hours in advance of beginning the initial phase. Separate minutes of this phase shall be prepared by the CQC System Manager and attached to the daily CQC report. Exact location of initial phase shall be indicated for future reference and comparison with follow-up phases.

g. The initial phase should be repeated for each new crew to work onsite, or any time acceptable specified quality standards are not being met.

3.6.3 Follow-up Phase

Daily checks shall be performed to assure control activities, including control testing, are providing continued compliance with contract requirements, until completion of the particular feature of work. The checks shall be made a matter of record in the CQC documentation. Final follow-up checks shall be conducted and all deficiencies corrected prior to the start of additional features of work which may be affected by the deficient work. The Contractor shall not build upon nor conceal non-conforming work.

3.6.4 Additional Preparatory and Initial Phases

Additional preparatory and initial phases shall be conducted on the same definable features of work if: the quality of on-going work is unacceptable; if there are changes in the applicable CQC staff, onsite production supervision or work crew; if work on a definable feature is resumed after a substantial period of inactivity; or if other problems develop.

3.7 TESTS

3.7.1 Testing Procedure

The Contractor shall perform specified or required tests to verify that control measures are adequate to provide a product which conforms to contract requirements. Upon request, the Contractor shall furnish to the

Government duplicate samples of test specimens for possible testing by the Government. Testing includes operation and/or acceptance tests when specified. The Contractor shall procure the services of a Corps of Engineers approved testing laboratory or establish an approved testing laboratory at the project site. The Contractor shall perform the following activities and record and provide the following data:

a. Verify that testing procedures comply with contract requirements.

b. Verify that facilities and testing equipment are available and comply with testing standards.

c. Check test instrument calibration data against certified standards.

d. Verify that recording forms and test identification control number system, including all of the test documentation requirements, have been prepared.

e. Results of all tests taken, both passing and failing tests, shall be recorded on the CQC report for the date taken. Specification paragraph reference, location where tests were taken, and the sequential control number identifying the test shall be given. If approved by the Contracting Officer, actual test reports may be submitted later with a reference to the test number and date taken. An information copy of tests performed by an offsite or commercial test facility shall be provided directly to the Contracting Officer. Failure to submit timely test reports as stated may result in nonpayment for related work performed and disapproval of the test facility for this contract.

3.7.2 Testing Laboratories

3.7.2.1 Capability Check

The Government reserves the right to check laboratory equipment in the proposed laboratory for compliance with the standards set forth in the contract specifications and to check the laboratory technician's testing procedures and techniques. Laboratories utilized for testing soils, concrete, asphalt, and steel shall meet criteria detailed in ASTM D 3740 and ASTM E 329.

3.7.2.2 Capability Recheck

If the selected laboratory fails the capability check, the Contractor will be assessed the actual cost for the recheck to reimburse the Government for each succeeding recheck of the laboratory or the checking of a subsequently selected laboratory. Such costs will be deducted from the contract amount due the Contractor.

3.7.3 Onsite Laboratory

The Government reserves the right to utilize the Contractor's control testing laboratory and equipment to make assurance tests, and to check the Contractor's testing procedures, techniques, and test results at no additional cost to the Government.

3.7.4 Furnishing or Transportation of Samples for Testing

Costs incidental to the transportation of samples or materials shall be

borne by the Contractor. Samples of materials for test verification and acceptance testing by the Government shall be delivered to the Resident or Area (as directed) Office.

For delivery by mail: Commander and Director
U.S. Army Engineer Waterways Experiment Station
Attn: CEWES-GS
3909 Hallsferry Road
Vicksburg, Mississippi 39180-6199

For other deliveries: Commander and Director
U.S. Army Engineer Waterways Experiment Station
Attn: CEWES-GS
3909 Hallsferry Road
Vicksburg, Mississippi 39180-6199

Coordination for each specific test, exact delivery location, and dates will be made through the Resident or Area (as directed) Office.

3.8 COMPLETION INSPECTION

3.8.1 Punch-Out Inspection

Near the end of the work, or any increment of the work established by a time stated in the Special Clause, "Commencement, Prosecution, and Completion of Work", or by the specifications, the CQC Manager shall conduct an inspection of the work. A punch list of items which do not conform to the approved drawings and specifications shall be prepared and included in the CQC documentation, as required by paragraph DOCUMENTATION. The list of deficiencies shall include the estimated date by which the deficiencies will be corrected. The CQC System Manager or staff shall make a second inspection to ascertain that all deficiencies have been corrected. Once this is accomplished, the Contractor shall notify the Government that the facility is ready for the Government Pre-Final inspection.

3.8.2 Pre-Final Inspection

The Government will perform the pre-final inspection to verify that the facility is complete and ready to be occupied. A Government Pre-Final Punch List may be developed as a result of this inspection. The Contractor's CQC System Manager shall ensure that all items on this list have been corrected before notifying the Government, so that a Final inspection with the customer can be scheduled. Any items noted on the Pre-Final inspection shall be corrected in a timely manner. These inspections and any deficiency corrections required by this paragraph shall be accomplished within the time slated for completion of the entire work or any particular increment of the work if the project is divided into increments by separate completion dates.

3.8.3 Final Acceptance Inspection

The Contractor's Quality Control Inspection personnel, plus the superintendent or other primary management person, and the Contracting Officer's Representative shall be in attendance at the final acceptance inspection. Additional Government personnel including, but not limited to, those from Base/Post Civil Facility Engineer user groups, and major commands may also be in attendance. The final acceptance inspection will be formally scheduled by the Contracting Officer based upon results of the

Pre-Final inspection. Notice shall be given to the Contracting Officer at least 14 days prior to the final acceptance inspection and shall include the Contractor's assurance that all specific items previously identified to the Contractor as being unacceptable, along with all remaining work performed under the contract, will be complete and acceptable by the date scheduled for the final acceptance inspection. Failure of the Contractor to have all contract work acceptably complete for this inspection will be cause for the Contracting Officer to bill the Contractor for the Government's additional inspection cost in accordance with the contract clause titled "Inspection of Construction".

3.9 DOCUMENTATION

The Contractor shall maintain current records providing factual evidence that required quality control activities and/or tests have been performed. These records shall include the work of subcontractors and suppliers and shall be on an acceptable form that includes, as a minimum, the following information:

a. Contractor/subcontractor and their area of responsibility.

b. Operating plant/equipment with hours worked, idle, or down for repair.

c. Work performed each day, giving location, description, and by whom. When Network Analysis (NAS) is used, identify each phase of work performed each day by NAS activity number.

d. Test and/or control activities performed with results and references to specifications/drawings requirements. The control phase shall be identified (Preparatory, Initial, Follow-up). List of deficiencies noted, along with corrective action.

e. Quantity of materials received at the site with statement as to acceptability, storage, and reference to specifications/drawings requirements.

f. Submittals and deliverables reviewed, with contract reference, by whom, and action taken.

g. Offsite surveillance activities, including actions taken.

h. Job safety evaluations stating what was checked, results, and instructions or corrective actions.

i. Instructions given/received and conflicts in plans and/or specifications.

j. Contractor's verification statement.

These records shall indicate a description of trades working on the project; the number of personnel working; weather conditions encountered; and any delays encountered. These records shall cover both conforming and deficient features and shall include a statement that equipment and materials incorporated in the work and workmanship comply with the contract. The original and one copy of these records in report form shall be furnished to the Contracting Officer's Representative on the first day following the date(s) covered by the report, except that reports need not be submitted for days on which no work is performed. As a minimum, one

report shall be prepared and submitted for every 7 days of no work and on the last day of a no work period. All calendar days shall be accounted for throughout the life of the contract. The first report following a day of no work shall be for that day only. Reports shall be signed and dated by the CQC System Manager. The report from the CQC System Manager shall include copies of test reports and copies of reports prepared by all subordinate quality control personnel.

3.10 SAMPLE FORMS

Sample forms enclosed at the end of this section.

3.11 NOTIFICATION OF NONCOMPLIANCE

The Contracting Officer will notify the Contractor of any detected noncompliance with the foregoing requirements. The Contractor shall take immediate corrective action after receipt of such notice. Such notice, when delivered to the Contractor at the work site, shall be deemed sufficient for the purpose of notification. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

_____
(FIRM NAME)

DAILY QUALITY CONTROL REPORT

Daily Report No.: _____ DATE: _____
Contract No. _____
Project Title & Location:
_____
Weather: ____ Precipitation: _____ in. _____ Temp:____ Min. ____ Max. ____

1. Contract/Subcontractors and Area of Responsibility:

NUMBER:	TRADE	HOURS	EMPLOYER	LOCATION/DESCRIPTION WORK

2. Operating Plant or Equipment. (Not hand tools)

Plant/Equipment	Date of Arrival/Departure	Date of Safety Check	Hours Used	Hours Idle	Hours Repair

3. Work Performed Today: (Indicate location and description of work performed by prime and/or subcontractors. When network analysis is used, identify work by NAS activity number).

4. Control Activities Performed:
   Preparatory Inspections: (Identify feature of work and attach minutes).
   Initial Inspections: (Identify feature of work and attach minutes).
   Follow-Up Inspections: (List inspections performed, results of inspection compared to specification requirements, and corrective actions taken when deficiencies are noted).

5. Tests Performed and Test Results: (Identify test requirement by paragraph number in specifications and/or sheet number in plans).

6. Material Received: (Note inspection results and storage provided).

7. Submittals Reviewed:

(a) Submittal No.	(b) Spec/Plan Reference	(c) By Whom	(d) Action

8. Offsite Surveillance Activities, Including Action Taken:

_____
_____
_____
_____
_____
_____
_____
_____

9. Job Safety: (List items checked, results, instructions and corrective actions taken).

_____
_____
_____
_____
_____
_____
_____
_____
_____

10. Remarks: (Instructions received or given. Conflict(s) in Plans and/or specifications. Delays encountered.).

_____
_____
_____
_____
_____
_____
_____

Contractor's Verification: On behalf of the Contractor, I certify this report is complete and correct, and all materials and equipment used and work performed during this reporting period are in compliance with the contract plans and specifications, to the best of my knowledge, except as may be noted above.

_____

CQC System Manager Date

-- End of Section --

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SECTION 02246

RIPRAP STONE PROTECTION

PART 1. GENERAL

1.0. SCOPE

The work covered by this section consists of furnishing all plant, labor, equipment and materials, and performing all operations in connection with furnishing and stockpiling **or** construction of stone protection at area sites in accordance with these specifications and plans and as directed by the Contracting Officer's Representative (COR). Stone protection material shall consist of all stone to be furnished for riprap. The Contractor shall so control operations during production of stone protection material as to insure that the material delivered and placed will meet all specification requirements. The Contractor shall perform all sampling and testing required for quality control in accordance with Section 01451 CONTRACTOR QUALITY CONTROL and as specified. The quarry operators shall be responsible for operating all quarries and for conditioning the area after operations are complete, in accordance with all applicable Federal, State, and local laws and regulations.

1.1. UNIT PRICE

The material shall be weighed: (1) on public or private scales, which have been certified by the State of North Dakota. The contractor shall furnish the COR a copy of each printed weigh bill when printing scales are used, or a copy signed by a public or bonded weigh-master for each load delivered; or (2) material may be weighed on contractor furnished scales under supervision of the COR. Each time, gross tare and net weight, name of project, name of contractor, contract number and signature of bonded weigh-master.

1.1.1. Measurement for Payment

1.1.1.1 Riprap (Types lII): The quantity of riprap material completed and accepted as determined by the Contracting Officer's Representative (COR) will be measured in 2000 pound tons of riprap material used in the accepted work. All riprap material shall be weighed to the nearest 20 pounds and the net weight reduced to the nearest hundredth of a ton.

1.1.1.2 Spalls (Type V): The quantity of material completed and accepted as determined by the Contracting Officer's Representative (COR) will be measured in 2000 pound tons of material used in the accepted work. All material shall be weighed to the nearest pound.

1.1.2. Basis for Payment

Payment for material, constructed and accepted, or stockpiled, will be made at the respective contract unit price in the unit price schedule. No payment will be made for any material wasted, used for the convenience of the Contractor, unused or rejected.

1.2. SUBMITTALS: Government approval is required for submittals with a "G" designation; submittals having an "FIO" designation are for information only. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

Submittals Required	Submittal Reference	Action Required
Waybills and Delivery Tickets	1.3	FIO
Riprap – Field Gradation	3.3.2	G-AO

1.3. WAYBILLS AND DELIVERY TICKETS

Copies of waybills or delivery tickets shall be submitted during the progress of the work. Before the final payment is allowed, waybills and certified delivery tickets shall be furnished for all stone protection materials actually used in the stockpiling or construction.

1.4. SAMPLING AND TESTING

1.4.1. General Requirements

No testing is required on field boulders.

PART 2. PRODUCTS

2.1. MATERIALS

2.1.1. General Requirements

All stone for stone slope protection (riprap) shall be durable angular fractured rock with a minimum of one flat surface as approved by the Contracting Officer's Representative. Material delivered to the site shall be free from cracks, seams, and other defects that will cause rapid or excessive deterioration or degradation during service. The material shall contain not more than 5 percent of undesirable material by weight. Undesirable material is defined as dirt, sand, clay, and rock fines. Stone protection material shall not contain disintegrating granite or shale. The Contractor shall select the source or sources from which he proposes to obtain the material and perform the initial sampling and gradation testing of the materials well in advance of the time required for use in the work.

2.1.2. Sources: The contractor shall notify the Contracting Officer's Representative of the selected rock source and/or production site and furnish a location map.

2.2. RIPRAP

The riprap shall consist of stone meeting the requirements specified and shall be free from thin slabby pieces having a maximum dimension more than four times the least dimension. Stone for riprap shall be reasonably well graded from coarse to fine. Dirt and fines of less than ½ - inch maximum cross section, shall not exceed 5 percent by weight.

2.3. GRADATION

The riprap and spalls shall be reasonably well-graded falling within the limits as shown on the tables below:

2.3.1. Riprap(Type I) – Not Applicable

2.3.2. Riprap(Type II) – Not Applicable

2.3.3. Riprap(Type III)

Weight in Pounds Per Stone	Percent of Total Weight Lighter Than or Passing
1,100	100
700	40-90
500	20-60
250	0-20

2.3.5 Riprap (Type V - Spalls) – Not Applicable

PART 3. EXECUTION

3.1. GENERAL

Operations shall be controlled to produce a reasonably well-graded stone of required size, and the Contracting Officer may require changes as necessary to produce the required product.

3.2. PLACEMENT

3.2.1. Dumped Riprap

Dumped stone not to exceed a drop height of ten feet from equipment to point of placement shall be placed in such a manner as to produce a reasonably well-graded mass of rock with the minimum practicable percentage of voids and shall be constructed to the lines and grades shown on the typical section. The larger stones in the final position shall be roughly graded to conform to the contour specified. The finished protection shall be generally free from pockets of small stones or clusters of larger stones. Placement of stone shall be accomplished by dumping at the base of the slope or by machine from the top of the slope using a loader, excavator or other suitable similar equipment. Drifting, manipulating, and moving stone at any time prior to placement by means of dozers or other blade equipment will not be permitted. Rearranging of individual stones by

mechanical equipment or by hand will be required to the extent necessary to obtain a reasonably well-graded distribution of stone sizes as specified herein. The Contractor shall maintain the riprap until accepted and any material displaced by any cause shall be replaced at his expense to the lines and grades shown on the drawings.

3.2.2. Placed Riprap

Riprap stone as designated on site drawings shall be placed in such manner as to produce a reasonably well-graded mass of rock with the minimum practicable percentage of voids. Riprap shall be placed to its full course thickness and in such a manner as to avoid damage to the bedding material and to minimize segregation of the riprap. The larger stones shall be well distributed and the entire mass of stones in their final position shall be roughly graded to conform to the gradation specified. The finished riprap shall be free from objectionable pockets of small stones and clusters of larger stones. Placed riprap in layers will not be permitted. The desired distribution of the various sizes of stones throughout the mass shall be obtained by selective loading of the material at the quarry or other source and by controlled dumping of successive loads during final placement operations. All stone shall be placed by zero drop height means with a clam, orange peel, skip box, grapple, excavator thumb or other accepted means. Zero drop height placement procedures are to be utilized for riprap stone to avoid displacing or damaging the underlying bedding. Dumping of stone at the top of slopes and rolling or pushing into place will not be permitted. Manipulating or moving stone at any time prior to placement by means of dozers or other blade

equipment will not be permitted. Rearranging of individual stones by mechanical equipment or by hand will be required to the extent necessary to obtain a reasonably well-graded distribution of stone sizes as specified above.

3.2.3. Stockpiled

3.2.3.1 General

Materials shall be handled to preserve their quality and fitness for work. Aggregates shall be transported in vehicles constructed to prevent loss or segregation of materials after loading and measuring.

3.2.3.2 Stockpiling Site Preparation

Prior to stockpiling of materials, storage sties shall be cleared and leveled by the Contractor. Sites shall be firm, smooth, and well drained. A bed of aggregate shall be maintained under the stockpile to prevent contaminating of stockpiled material with soil or foreign matter.

3.2.3.3 Stockpiling

The Contractor is responsible for pushing materials into piles. Piles shall be no higher than 15’.

3.3. FIELD GRADATION

3.3.1. General

If the material fails to meet the gradation limits specified, the Contractor shall discontinue placement
of the material and adjust his operations or he shall propose another source. The Contractor shall verify with the necessary additional tests that acceptable materials are being produced. Tests, which do not pass the gradation requirements, will not be counted in the additional required tests above. The contractor at his expense will perform all field tests.

3.3.2. Riprap

A field gradation test of riprap material shall be performed by the Contractor to determine if the material as delivered to the job meets the gradation requirements of this specification. A sample consisting of 12 tons shall be taken of material delivered the job and checked for gradation and elongation. The material delivered from the initial test that meets specifications shall be placed in a well-marked area as designated by the Contracting Officer’s Representative to serve as a visual model for acceptable material. Material that does not meet specifications shall not be counted as a required test. The contractor shall state in writing the method used in processing, loading, and handling this sample, and shall notify the Contracting Officer’s Representative any time any methods are changed. Riprap material shall not be placed until the material delivered to the job has passed a field gradation test. At the discretion of the Contracting Officer’s Representative, random loads will be dumped or the in-place material will be sampled and gradation control check shall be performed by the Contractor at the discretion and under the supervision of the Contracting Officer’s Representative.

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SECTION 02300

EARTHWORK

PART 1. GENERAL

1.1. REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)

ASTM C 136	Sieve Analysis of Fine and Coarse Aggregates
ASTM D 422	Particle-Size Analysis of Soils
ASTM D 1140	Amount of Material in Soils Finer than the No. 200 (75-micrometer) Sieve
ASTM D 1556	Density and Unit Weight of Soil in Place by the Sand-Cone Method
ASTM D 1557	Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/cu. ft. (2,700 kN-m/cu. m.))
ASTM D 2167	Density and Unit Weight of Soil in Place by the Rubber Balloon Method
ASTM D 2487	Classification of Soils for Engineering Purposes (Unified Soil Classification System)
ASTM D 2922	Density of Soil and Soil-Aggregate in Place by Nuclear Methods (Shallow Depth)
ASTM D 2937	Density of Soil in Place by the Drive-Cylinder Method
ASTM D 3017	Water Content of Soil and Rock in Place by Nuclear Methods (Shallow Depth)
ASTM D 4318	Liquid Limit, Plastic Limit, and Plasticity Index of Soils

1.2. MEASUREMENT

1.2.1. Excavation/ Backfill

The unit of measurement for excavation and borrow will be the cubic yard, computed by the average end area method from cross sections taken before and after the excavation and/or borrow operations. The contractor shall be responsible for all surveys needed to show quantities of material moved. The volume to be paid will be the number of cubic yards of material measured in its original position and removed from the excavation and borrow areas, including the excavation for ditches, gutters, and channel changes, when the material is acceptably utilized as backfill or disposed of as herein specified. The measurements will include authorized excavation of rock, authorized excavation of unsatisfactory subgrade soil, and the volume of loose, scattered rocks and boulders collected within the limits of the work; allowance will be made on the same basis for selected backfill ordered as replacement. The measurement will not include the volume of subgrade material or other material that is scarified or plowed and reused in-place, and will not include the volume excavated without authorization or the volume of any material used for purposes other than directed. The volumes of overburden stripped from borrow pits and the volumes of excavation for ditches to drain borrow pits, unless used as borrow material, will not be measured for payment. The measurement will not include the volume of any excavation

performed prior to the taking of elevations and measurements of the undisturbed grade.

In lieu of surveys, the contractor and COR by agreement may determine quantities of material used by utilizing full loaded truck capacities minus a 20% shrinkage factor for lossage and compaction of hauled borrow or excavated material. This agreement will be based on the fully loaded trucks and submission of load transfer tickets showing transport of material from the borrow site to the site of placement.

1.2.2. Topsoil Requirements

Separate excavation, hauling, and spreading or piling of topsoil and related miscellaneous operations will be considered subsidiary obligations of the Contractor, covered under the contract unit price for excavation.

1.2.3 Haul Requirements

Haul charges will be computed into the excavation/ backfill unit cost with a maximum average haul radius of 10 miles from the borrow to the placement site.

1.3. PAYMENT

Payment will constitute full compensation for all labor, equipment, tools, supplies, and incidentals necessary to complete the work.

1.3.1. Excavation/ Borrow

Excavation/ Borrow will be paid for at the contract unit prices per cubic yard for common or rock excavation.

1.4. DEFINITIONS

1.4.1. Satisfactory Materials

Satisfactory materials shall comprise any materials classified by ASTM D 2487 as GW, GP, GM, GC, SW, and SP. Satisfactory materials for grading shall be comprised of stones less than 8 inches; except for fill material for pavements and railroads which shall be comprised of stones less than 3 inches in any dimension.

1.4.2. Unsatisfactory Materials

Materials, which do not comply with the requirements for satisfactory materials, are unsatisfactory. Unsatisfactory materials also include man-made fills; trash; refuse; backfills from previous construction; and material classified as satisfactory which contains root and other 02300-4organic matter or frozen material. The Contracting Officer shall be notified of any contaminated materials.

1.4.3. Cohesionless and Cohesive Materials

Cohesionless materials include materials classified in ASTM D 2487 as GW, GP, SW, and SP. Cohesive materials include materials classified as GC, SC, ML, CL, MH, and CH. Materials classified as GM and SM will be identified as cohesionless only when the fines are nonplastic. Testing required for

classifying materials shall be in accordance with ASTM D 4318, ASTM C 136, ASTM D 422, and ASTM D 1140.

1.4.4. Degree of Compaction

Degree of compaction required is expressed as a percentage of the maximum density obtained by the test procedure presented in ASTM D 1557 abbreviated as a percent of laboratory maximum density.

1.4.5. Topsoil

Material suitable for topsoil obtained from the required excavation. Topsoil shall not contain more than five percent by volume of stones, stumps or objects larger than 1 inch in any dimension. Topsoil shall be conserved to cover to a minimum depth of 4 inches all areas to be disturbed except areas to be paved or similarly surfaced in this contract.

1.5. SUBMITTALS

Government approval is required for submittals with a "GA" designation; submittals having an "FIO" designation are for information only. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

Submittals Required	Specification Reference	Action Required
Borrow Material – Letters from Land owners	3.3	FIO
Backfill – Testing	3.4	GA
Ground Surface – Testing	3.5.1	GA
Embankment – Testing	3.6.1	GA
Subgrade – Compaction – Testing	3.7.2	GA
Testing – Lab Certification	3.11	FIO
Moisture Contents - Testing	3.11.4	GA
Optimum Moisture & Laboratory Maximum Density – Testing	3.11.5	GA

1.6. SUBSURFACE DATA – Not Applicable

1.7. CLASSIFICATION OF EXCAVATION

No consideration will be given to the nature of the materials, and all excavation will be designated as unclassified excavation.

1.7.1. Rock Excavation – Not Applicable

1.7.2. Common Excavation

Common excavation shall include the satisfactory removal and disposal of all materials not classified as rock excavation.

1.8. BLASTING - Blasting will not be permitted.

1.9. UTILIZATION OF EXCAVATED MATERIALS

Unsatisfactory materials removed from excavations shall be disposed of in designated waste disposal or spoil areas. Satisfactory material removed from excavations shall be used, insofar as practicable, in the construction of fills, embankments, subgrades, shoulders, bedding (as backfill), and for similar purposes. No satisfactory excavated material shall be wasted without specific written authorization. Satisfactory material authorized to be wasted shall be disposed of in designated areas approved for surplus material storage or designated waste areas as directed. Newly designated waste areas on Government-controlled land (at the contractor's expense) shall be cleared and grubbed before disposal of waste material thereon. Coarse rock from excavations shall be stockpiled and used for constructing slopes or embankments adjacent to streams, or sides and bottoms of channels and for protecting against erosion. No excavated material shall be disposed of to obstruct the flow of any stream, endanger a partly finished structure, impair the efficiency or appearance of any structure, or be detrimental to the completed work in any way.

PART 2. PRODUCTS (Not Applicable)

PART 3. EXECUTION

3.1. STRIPPING OF TOPSOIL

Topsoil will be separately excavated, stored, and used for surface finish in preparation for seeding, sodding, or other planting, only where topsoil is definitely superior for grass and plant growth as compared with the remainder of the excavated material. Where indicated or directed, topsoil shall be stripped to a depth of 4 inches. Topsoil shall be spread on areas already graded and prepared for topsoil, or transported and deposited in stockpiles convenient to areas that are to receive application of the topsoil later, or at locations indicated or specified. Topsoil shall be kept separate from other excavated materials, brush, litter, objectionable weeds, roots, stones larger than 2 inches in diameter, and other materials that would interfere with planting and maintenance operations. Any surplus of topsoil from excavations and grading shall be stockpiled in locations indicated.

3.2. GENERAL EXCAVATION

The Contractor shall perform excavation of every type of material encountered within the limits of the project to the lines, grades, and elevations indicated and as specified. Grading shall be in conformity with the typical sections shown and the tolerances specified in paragraph FINISHING. Satisfactory excavated materials shall be transported to and placed in fill or embankment within the limits of the work. Unsatisfactory materials encountered within the limits of the work shall be excavated below grade and replaced with satisfactory materials as directed. Such excavated material and the satisfactory material ordered as replacement shall be included in

excavation. Surplus satisfactory excavated material not required for fill or embankment shall be disposed of in areas approved for surplus material storage or designated waste areas. Unsatisfactory excavated material shall be disposed of in designated waste or spoil areas. During construction, excavation and fill shall be performed in a manner and sequence that will provide proper drainage at all times. Material required for fill or embankment in excess of that produced by excavation within the grading limits shall be excavated from the borrow areas indicated or from other approved areas selected by the Contractor as specified.

3.3. SELECTION OF BORROW MATERIAL

Borrow material shall be selected to meet the requirements and conditions of the particular fill or embankment for which it is to be used. Borrow material shall be obtained from the borrow areas, within the limits of the project site. Necessary clearing, grubbing, and satisfactory drainage of borrow pits and the disposal of debris thereon shall be considered related operations to the borrow excavation.

3.4 BACKFILL

Backfill adjacent to any and all types of structures shall be placed and compacted to at least 90 percent laboratory maximum density for cohesive materials or 95 percent laboratory maximum density for cohesionless materials to prevent wedging action or eccentric loading upon or against the structure. Ground surface on which backfill is to be placed shall be prepared as specified in paragraph PREPARATION OF GROUND SURFACE FOR EMBANKMENTS. Compaction requirements for backfill materials shall also conform to the applicable portions of paragraphs PREPARATION OF GROUND SURFACE FOR EMBANKMENTS, EMBANKMENTS, and SUBGRADE PREPARATION. Sheepsfoot rollers shall accomplish compaction, pneumatic-tired rollers, steel-wheeled rollers, vibratory compactors, or other approved equipment.

3.5. PREPARATION OF GROUND SURFACE FOR EMBANKMENTS

3.5.1. General Requirements

Ground surface on which fill is to be placed shall be stripped of live, dead, or decayed vegetation, rubbish, debris, and other unsatisfactory material; plowed, disked, or otherwise broken up to a depth of 6 inches; pulverized, moistened or aerated as necessary; thoroughly mixed; and compacted to at least 90 percent laboratory maximum density for cohesive materials or 95 percent laboratory maximum density for cohesionless materials. Sheepsfoot rollers shall accomplish compaction, pneumatic-tired rollers, steel-wheeled rollers, vibratory compactors, or other approved equipment. The prepared ground surface shall be scarified and moistened or aerated as required just prior to placement of embankment materials to assure adequate bond between embankment material and the prepared ground surface.

3.5.2. Frozen Material

Embankment shall not be placed on a foundation which contains frozen material, or which has been subjected to freeze-thaw action. This prohibition encompasses all foundation types, including the natural ground, all prepared subgrades (whether in an excavation or on an embankment) and all layers of previously placed and compacted earth fill which become the foundations for successive layers of earth fill. All material that freezes or has been

subjected to freeze-thaw action during the construction work, or during periods of temporary shutdowns, such as, but not limited to, nights, holidays, weekends, winter shutdowns, or earthwork operations, shall be removed to a depth that is acceptable to the Contracting Officer and replaced with new material. Alternatively, the material will be thawed, dried, reworked, and recompacted to the specified criteria before additional material is placed. The Contracting Officer will determine when placement of fill shall cease due to cold weather. The Contracting Officer may elect to use average daily air temperatures, and/or physical observation of the soils for his determination. Embankment material shall not contain frozen clumps of soil, snow, or ice.

3.6. EMBANKMENTS

3.6.1. Earth Embankments

Earth embankments shall be constructed from satisfactory materials free of organic or frozen material and rocks with any dimension greater than 3 inches. The material shall be placed in successive horizontal layers of loose material not more than 6 inches in depth. Each layer shall be spread uniformly on a soil surface that has been moistened or aerated as necessary, and scarified or otherwise broken up so that the fill will bond with the surface on which it is placed. After spreading, each layer shall be plowed, disked, or otherwise broken up; moistened or aerated as necessary; thoroughly mixed; and compacted to at least 90 percent laboratory maximum density for cohesive materials or 95 percent laboratory maximum density for cohesionless materials. Compaction requirements for the upper portion of earth embankments forming subgrade for pavements shall be identical with those requirements specified in paragraph SUBGRADE PREPARATION. Sheepsfoot rollers shall accomplish compaction, pneumatic-tired rollers, steel-wheeled rollers, vibratory compactors, or other approved equipment.

3.7. SUBGRADE PREPARATION

3.7.1. Construction

Subgrade shall be shaped to line, grade, and cross section, and compacted as specified. This operation shall include plowing, disking, and any moistening or aerating required obtaining specified compaction. Soft or otherwise unsatisfactory material shall be removed and replaced with satisfactory excavated material or other approved material as directed. Rock encountered in the cut section shall be excavated to a depth of 6 inches below finished grade for the subgrade. Low areas resulting from removal of unsatisfactory material or excavation of rock shall be brought up to required grade with satisfactory materials, and the entire subgrade shall be shaped to line, grade, and cross section and compacted as specified. After rolling, the surface of the subgrade for roadways shall not show deviations greater than 0.05 inch when tested with a 10 foot straightedge applied both parallel and at right angles to the centerline of the area. The elevation of the finish subgrade shall not vary more than 0.05 foot from the established grade and cross section.

3.7.2. Compaction

Sheepsfoot rollers shall accomplish compaction, pneumatic-tired rollers, steel-wheeled rollers, vibratory compactors, or other approved equipment.

Except for paved areas, each layer of the embankment shall be compacted to at least 90 percent of laboratory maximum density.

3.8. SHOULDER CONSTRUCTION – Not Appicable

3.9. FINISHING

The surface of excavations, embankments, and subgrades shall be finished to a smooth and compact surface in accordance with the lines, grades, and cross sections or elevations shown. The degree of finish for graded areas shall be within 0.1 foot of the grades and elevations indicated except that the degree of finish for subgrades shall be specified in paragraph SUBGRADE PREPARATION. Gutters and ditches shall be finished in a manner that will result in effective drainage. The surface of areas to be turfed shall be finished to a smoothness suitable for the application of turfing materials.

3.10. PLACING TOPSOIL

On areas to receive topsoil, the compacted subgrade soil shall be scarified to a 2 inch depth for bonding of topsoil with subsoil. Topsoil then shall be spread evenly to a thickness of 4 inches and graded to the elevations and slopes shown. Topsoil shall not be spread when frozen or excessively wet or dry. Material required for topsoil in excess of that produced by excavation within the grading limits shall be obtained from offsite areas.

3.11. TESTING

The Contractor subject to approval shall perform by an approved commercial testing laboratory or testing. If the Contractor elects to establish testing facilities, no work requiring testing will be permitted until the Contractor's facilities have been inspected and approved by the Contracting Officer. The first inspection will be at the expense of the Government. Cost incurred for any subsequent inspections required because of failure of the first inspection will be charged to the Contractor. Field in-place density shall be determined in accordance with ASTM D 1556. When test results indicate, as determined by the Contracting Officer, that compaction is not as specified, the material shall be removed, replaced and recompacted to meet specification requirements. Tests on recompacted areas shall be performed to determine conformance with specification requirements. A registered professional civil engineer shall certify inspections and test results. These certifications shall state that the tests and observations were performed by or under the direct supervision of the engineer and that the results are representative of the materials or conditions being certified by the tests. The following number of tests, if performed at the appropriate time, will be the minimum acceptable for each type operation.

3.11.1. Fill and Backfill Material Gradation

One test per 1000 cubic yards stockpiled or in-place source material. Gradation of fill and backfill material shall be determined in accordance with ASTM 422 and ASTM C 1140.

3.11.2. In-Place Densities

a. One test per 10,000 square feet, or fraction thereof, of each lift of fill or backfill areas compacted by other than hand-operated machines.

b. One test per 1000 square feet, or fraction thereof, of each lift of fill or backfill areas compacted by hand-operated machines.
c. One test per 5000 linear feet, or fraction thereof, of each lift of embankment or backfill for roads.

3.11.3. Check Tests on In-Place Densities

If ASTM D 2922 is used, in-place densities shall be checked by ASTM D 1556 as follows:

a. One check test per lift for each 50,000 square feet, or fraction thereof, of each lift of fill or backfill compacted by other than hand-operated machines.
b. One check test per lift for each 5000 square feet, of fill or backfill areas compacted by hand-operated machines.
c. One check test per lift for each 25,000 linear feet, or fraction thereof, of embankment or backfill for roads.

3.11.4. Moisture Contents

In the stockpile, excavation, or borrow areas, a minimum of one test per week per type of material or source of material being placed during stable weather conditions shall be performed. During unstable weather, tests shall be made as dictated by local conditions and approved by the Contracting Officer.

3.11.5. Optimum Moisture and Laboratory Maximum Density

Tests shall be made for each type material or source of material including borrow material to determine the optimum moisture and laboratory maximum density values. One representative test per 1000 cubic yards of fill and backfill, or when any change in material occurs which may affect the optimum moisture content or laboratory maximum density.

3.11.6. Tolerance Tests for Subgrades

Continuous checks on the degree of finish specified in paragraph SUBGRADE PREPARATION shall be made during construction of the subgrades.

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SECTION 02378A

GEOTEXTILES USED AS FILTERS

Part 1. GENERAL

1.1 SCOPE: The work consists of furnishing all plant, labor. material, and equipment and performing all operations required for furnishing, hauling, and placing the geotextile, complete, as specified and shown, and maintaining the geotextile until placement of the granular filter material, bedding material, and/or riprap cover is completed and accepted.

1.2 UNIT PRICES/PAYMENT

1.2.1 Geotextiles

Installed geotextiles will be measured for payment in place to the nearest square yard of protected area as delineated in the drawings. Payment will be made at the contract unit price and will constitute full compensation to the contractor for providing all plant, labor, material, and equipment and performing all operations necessary for the complete and satisfactory installation of the geotextile. The following items are included in the contract unit price for Geotextiles and will not be counted a second time in the process of determining the extent of geotextile placed: Material and associated equipment and operation used in laps, seams, or extra length; securing pins and associated material, equipment, and operations; and material and associated equipment and operations used to provide cushioning layer of sand or gravel or both to permit increase in allowable drop height of stone. No payment will be made for geotextiles replaced because of waste, contamination, damage, repair, or due to contractor fault or negligence.

1.3 SUBMITTALS
Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

PART 2 PRODUCTS

2.1 MATERIALS

2.1.1 Geotextile

The geotextile shall be a non-woven pervious sheet of plastic yarn as defined by ASTM D 123. The geotextile shall be equal to or exceed the minimum average roll values for Amoco 4553, Propex 4553, and/or SI 801.

2.1.2 Securing Pins

The geotextile shall be secured to the embankment or foundation soil by pins to prevent movement prior to placement of revetment materials. Other appropriate means to prevent movement such as staples, sand bags, and stone could also be used. Securing pins shall be inserted through both strips of overlapped geotextile along the line passing through midpoints of the overlap. Securing pins shall be removed as placement of revetment materials are placed to prevent tearing of geotextile or enlarging holes maximum

spacing between securing pins depends on the steepness of the embankment slope. When windy conditions prevail at the construction site, the number of pins should be increased upon the demand of the Contracting Officer. Terminal ends of the geotextile shall be anchored with key trench or apron at crest, toe of the slope and upstream and downstream limits of installation.

PART 3 EXECUTION

3.1 SURFACE PREPARATION

Surface on which the geotextile will be placed shall be prepared to a relatively smooth surface condition, in accordance with the applicable portion of this specification and shall be free from obstruction, debris, depressions, erosion feature, or vegetation. Any irregularities will be removed so as to insure continuous, intimate contact of the geotextile with all the surface. Any loose material, soft or low density pockets of material, will be removed; erosion features such as rills, gullies etc. must be graded out of the surface before geotextile placement.

3.2 INSTALLATION OF THE GEOTEXTILE

3.2.1 General

The geotextile shall be placed in the manner and at the locations shown. At the time of installation, the geotextile shall be rejected if it has defects, rips, holes, flaws, deterioration or damage incurred during manufacture, transportation or storage.

3.2.2 Placement

The geotextile shall be placed with the long dimension parallel to the shoreline and laid smooth and free of tension, stress, folds, wrinkles, or creases. The strips shall be placed to provide a minimum width of 18 inches of overlap for each joint. The placement procedure requires that the length of the geotextile be approximately 15 percent greater than the slope length. The Contractor shall adjust the actual length of the geotextile used based on initial installation experience. Temporary pinning of the geotextile to help hold it in place until the riprap is placed shall be allowed. The temporary pins shall be removed as the riprap is placed to relieve high tensile stress which may occur during placement of material on the geotextile. Trimming shall be performed in such a manner that the geotextile shall not be damaged in any way.

3.3 PROTECTION

The geotextile shall be protected at all times during construction from contamination by surface runoff and any geotextile so contaminated shall be removed and replaced with uncontaminated geotextile. Any damage to the geotextile during its installation or during placement of riprap shall be replaced by the Contractor at no cost to the Government. The work shall be scheduled so that the covering of the geotextile with a layer of the specified material is accomplished within 7 calendar days after placement of the geotextile. Failure to comply shall require replacement of geotextile. The geotextile shall be protected from damage prior to and during the placement of riprap or other materials. Before placement of riprap or other materials, the Contractor shall demonstrate that the placement technique will

not cause damage to the geotextile. In no case shall any type of equipment be allowed on the unprotected geotextile.

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SECTION 02921
SEEDING

PART 1 GENERAL

1.1. MEASUREMENT AND PAYMENT

The actual application rate will be determined by the Contracting Officer and applied to the number of square feet/acres of seeding. The quantity of seeding to be paid for will be the number of square feet/acres completed and accepted as determined by the Contracting Officer.

1.2 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

Submittals Required	Specification Section	Action Required
Seed Tests	1.3.1	GA

1.3 INSPECTION, STORAGE, AND HANDLING

1.3.1 Seed Inspection

Seed shall be inspected upon arrival at the job site for conformity to species and quality. Seed that is wet, moldy, or bears a test date nine months or older, shall be rejected. Other materials shall be inspected for compliance with specified requirements.
A certified test report shall be furnished to the Contracting Officer before seeding operations start.

1.3.2 Storage

Seed shall be stored in cool, dry locations away from contaminants.

1.3.3 Handling

Except for bulk deliveries, materials shall not be dropped or dumped from vehicles.

1.3.4 Time Limitation

Hydro seeding time limitation for holding seed in the slurry shall be a maximum 24 hours.

PART 2 PRODUCTS

2.1 SEED

2.1.1 Seed Classification & Permanent Seed Species and Mixtures

Permanent seed species and mixtures shall be proportioned by weight as follows:

LAWN SEED - shall be a mix known as Supreme Lawn Mix

FIELD SEED - shall be the following:

Mixture Common Name	(Variety)	Percent by Weight
Slender Wheatgrass	Revenue or Primar	20
Western Wheatgrass	Rodann or Rosanna	20
Side-Oats Gramma	Killdeer or Pierre	10
Green Needlegrass	Lodorm	20
Canada Wildrye		20
Seed Oats (cover)		10
		100

2.1.2 Quality

Weed seed shall be a maximum 1 percent by weight of the total mixture.

2.1.3 Seed Mixing

The mixing of seed may be done by the seed supplier prior to delivery, or on site as directed.

2.1.4 Substitutions

Substitutions will not be allowed without written request and approval from the Contracting Officer.

2.2 WATER

Water shall be the responsibility of the Contractor. Water shall not contain elements toxic to plant life.

2.3 TOPSOIL

If additional topsoil is required beyond that available from grading operations, the Contractor at a separate unit price per ton delivered and placed shall furnish it. The topsoil shall be a natural, friable soil representative of productive soils in the vicinity, and approved by the Contracting Officer. It shall be obtained from well-drained areas and shall be free of any admixture of subsoil, foreign matter, objects larger than 1 inch in any dimension, toxic substances, and any material or substance that may be harmful to plant growth.

PART 3 EXECUTION

3.1 INSTALLING SEED TIME AND CONDITIONS

3.1.1 Seeding Time

Seed shall be sown before June 15 and after September 1.

3.1.2 Seeding Equipment Requirements

Immediately prior to the commencement of seeding operations, calibration tests shall be conducted on the equipment to be used. These tests shall confirm that the equipment is operating within the manufacturer's specifications and will meet the specified criteria. The equipment shall be calibrated a minimum of once every day during the operation. Equipment to be used when Hydro-Seeding is required shall be hydraulic equipment capable of uniformly mixing the specified seed in water for uniform distribution.

3.2 SITE PREPARATION

3.2.1 Finished Grade and Topsoil

Areas to be seeded shall be cleared of all material that is detrimental to seedbed preparation. The cleared areas shall be shaped to a cross section that best fits existing conditions.

(1) No seed shall be sown when the wind velocity exceeds 15 miles per hour.

(2) No seed shall be sown in standing water or frozen ground

(3) All slopes will be worked on the contour.

3.2.2 Tillage

Soil on slopes up to a maximum 3-horizontal to 1-vertical shall be tilled to a minimum 4-inch depth. On slopes between 3-horizontal to 1-vertical and 1-horizontal to 1-vertical, the soil shall be tilled to a minimum 2-inch depth by scarifying with heavy rakes, or other method. Rototillers shall be used where soil conditions and length of slope permit. On slopes 1-horizontal to 1-vertical and steeper, no tillage is required. Drainage patterns shall be maintained as indicated on drawings. Areas compacted by construction operations shall be completely pulverized by tillage. Soil used for repair of surface erosion or grade deficiencies shall conform to topsoil requirements. The fertilizer and soil conditioner may be applied during this procedure.

3.2.3 Prepared Surface

3.2.3.1 Preparation

The prepared surface shall be a maximum 1-inch below the adjoining grade of any surfaced area. New surfaces shall be blended to existing areas. The prepared surface shall be completed with a light raking to remove debris.

3.2.3.2 Lawn Area Debris

Debris and stones over a minimum 5/8-inch in any dimension shall be removed from the surface.

3.2.3.3 Field Area Debris

Debris and stones over a minimum 3-inch in any dimension shall be removed from the surface.

3.2.3.4 Protection

Areas with the prepared surface shall be protected from compaction or damage by vehicular or pedestrian traffic and surface erosion.

3.3 INSTALLATION

Prior to installing seed, any previously prepared surface compacted or damaged shall be reworked. Seeding operations shall not take place when the wind velocity will prevent uniform seed distribution.

3.3.1 Installing Seed

Seeding method may be Broadcast Seeding, Drill Seeding, or Hydro seeding. Seeding procedure shall ensure even coverage. Gravity feed applicators, which drop seed directly from a hopper onto the prepared soil, shall not be used because of the difficulty in achieving even coverage, unless otherwise approved.

3.3.1.1 Broadcast Seeding

Seed may be uniformly broadcast at the rate specified using broadcast seeders. Half the total rate of seed application shall be broadcast in 1 direction, with the remainder of the seed rate broadcast at 90 degrees from the first direction. Seed shall be covered a maximum 1/4 inch depth by disk harrow, steel mat drag, cultipacker, or other approved device.

3.3.1.2 Drill Seeding

Seed shall be uniformly drilled to a maximum 1/2-inch depth and at the rate specified, using equipment having drills a maximum 7 inches distance apart. Row markers shall be used with the drill seeder. Half the total rate of seed application shall be drilled in 1 direction, with the remainder of the seed rate drilled at 90 degrees from the first direction. The drilling equipment shall be maintained with half full seed boxes during the seeding operations.

3.3.1.3 Rolling

The entire area shall be firmed with a roller not exceeding 90 pounds per foot roller width. Slopes over a maximum 3-horizontal to 1-vertical shall not be rolled. Areas seeded with seed drills equipped with rollers shall not be rolled.

3.3.2 Hydro seeding

Seed shall be mixed to ensure broadcast at the rate specified. Seed and fertilizer shall be added to water and thoroughly mixed to meet the rates specified. The time period for the seed to be held in the slurry shall be a maximum 24 hours. Wood cellulose fiber mulch and tackifier shall be added at the rates recommended by the manufacturer after the seed, fertilizer, and water have been thoroughly mixed to produce homogeneous slurry. Slurry shall be uniformly applied under pressure over the entire area. The hydro seeded area shall not be rolled.

3.4 RESTORATION AND CLEAN UP

3.4.1 Restoration

Existing turf areas, pavements, and facilities that have been damaged from the seeding operation shall be restored to original condition at Contractor's expense.

3.4.2 Clean Up

Excess and waste material shall be removed from the seeded areas and shall be disposed offsite. Adjacent paved areas shall be cleaned.

3.5 PROTECTION OF INSTALLED AREAS

Immediately upon completion of the seeding operation in an area, the area shall be protected against traffic or other use by erecting barricades and providing signage as required, or as directed.

3.6 SEED ESTABLISHMENT PERIOD

3.6.1 Lawn Hydro-Seeding/Watering

Areas to be seeded by the Hydroseeding method shall be wetted by daily sprinkler for the first 5 days, and then periodically for the next 10 days to keep the soil moist for a depth of 3 inches.

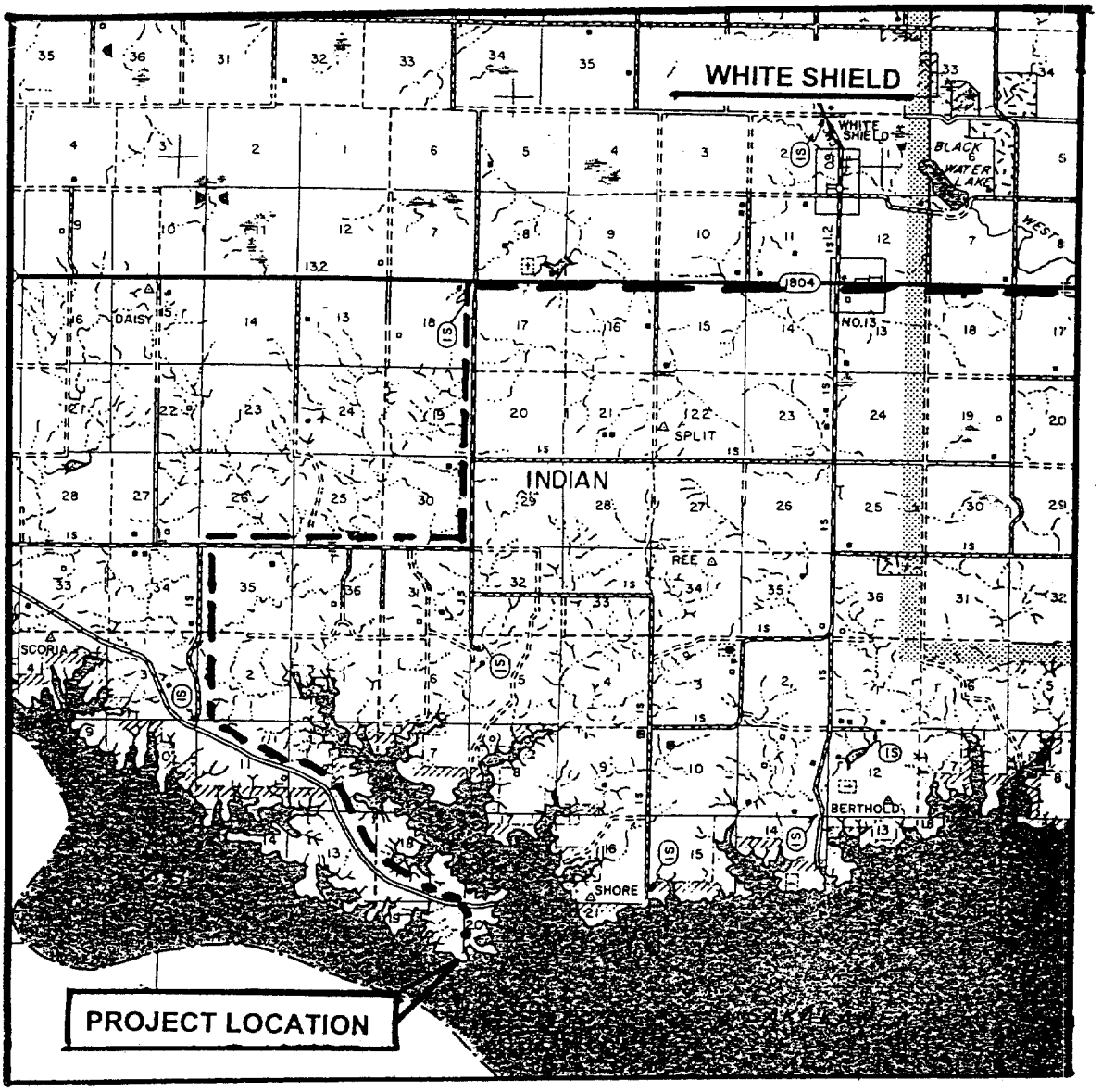
3.6.2 Commencement

The seed establishment period to obtain a healthy stand of grass plants shall begin on the first day of work under this contract and shall end 1 month after the last day of the seeding operation. Written calendar time period shall be furnished for the seed establishment period. When there is more than 1 seed establishment period, the boundaries of the seeded area covered for each period shall be described. The seed establishment period shall be modified for inclement weather, shut down periods, or for separate completion dates of areas.

3.6.3 Satisfactory Stand of Grass Plants

Grass plants shall be evaluated for species and health when the grass plants are a minimum 1-inch high.

CEMETARY

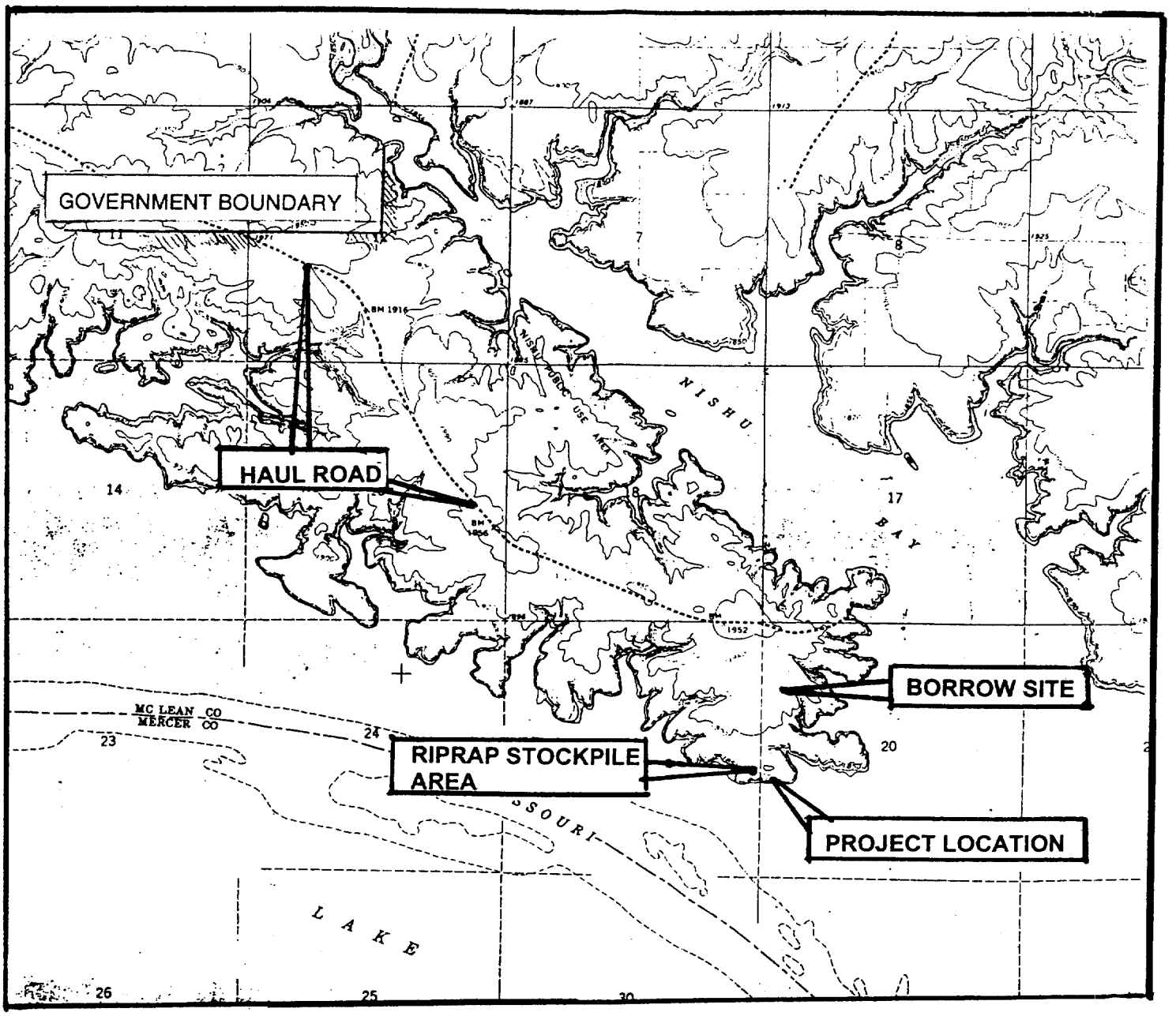


U.S. ARMY CORPS OF ENGINEERS
GARRISON PROJECT OFFICE
RIVERDALE, NORTH DAKOTA

NISHU POINT CEMETERY RIPRAP PROTECTION PROJECT

LOCATION/VICINITY MAP

SPEC. NO.:	DATE:	SHEET NO.
CONTRACT NO.:		



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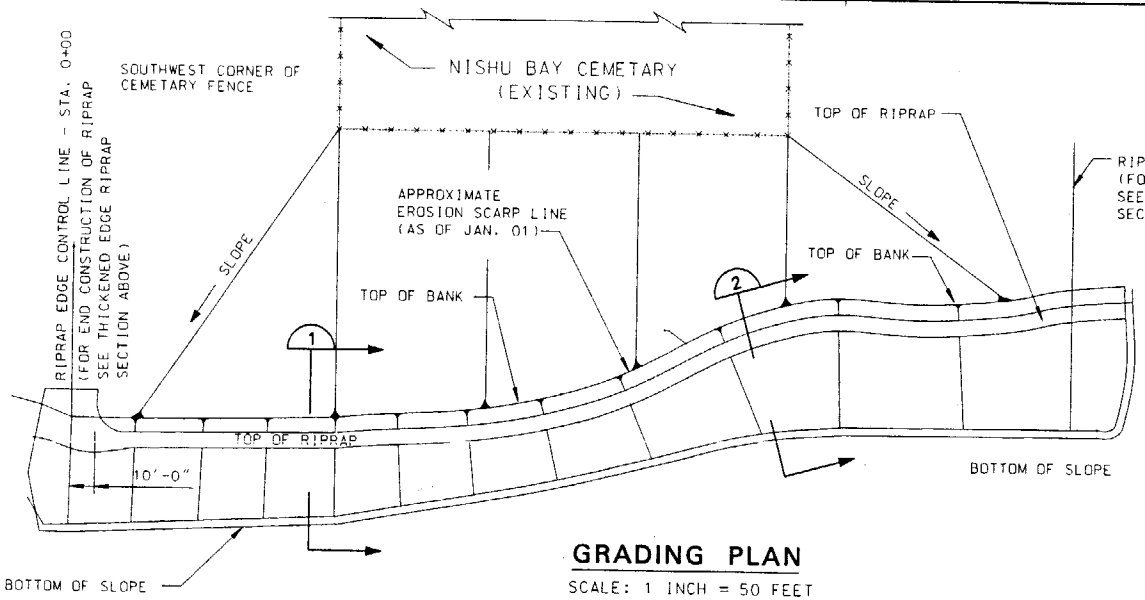


GRADING PLAN

SCALE: 1 INCH = 50 FEET

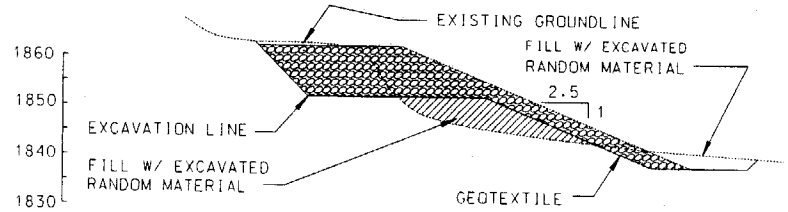
10'0 50'

NOTES:

1. ALL WORK PERFORMED FROM BASE OF CUTBANK.
2. GEOTEXTILE (AMOCO 4553, SI 801, OR EQUIVALENT).
3. RIPRAP GRADATION:

WEIGHT IN POUNDS PER STONE	PERCENT OF TOTAL WEIGHT LIGHTER THAN OR PASSING
1,100	100
700	40-90
500	20-60
250	0-20

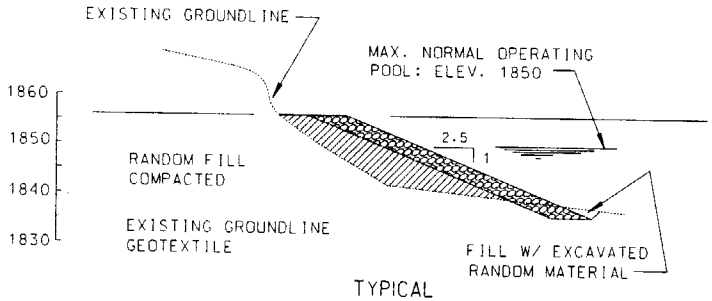
4. BORROW AREA WILL BE PROVIDED WITHIN 1/4 MILE OF THE PROJECT SITE.



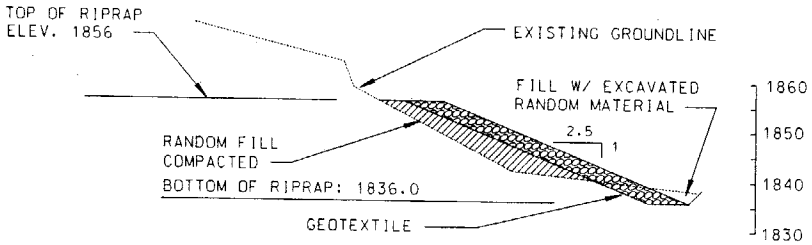
TYPICAL THICKENED EDGE RIPRAP SECTIONS

NO SCALE

SEED ALL EXPOSED SURFACES
ABOVE 1856



TYPICAL
SECTION 2
NO SCALE



TYPICAL
SECTION 2
NO SCALE

MISSOURI RIVER GARRISON DAM PROJECT OFFICE
NISHU POINT CEMETERY
RIPRAP PROTECTION PROJECT
PLAN AND SECTIONS

U S ARMY ENGINEER DISTRICT
CORPS OF ENGINEERS
OMAHA, NEBRASKA

Submitted by: Chief Section
Designed by: Reviewed by: Checked by: Drawn by:
Computer File: Spec. No.
Date: X Contract No.
Drawing Code:
Sheet No.