

# **SPECIFICATIONS**

## **IDIQ Construction Contract**

### **(Request For Proposal)**

Solicitation No. W9128F-04-R-0004

## **Missouri River Mitigation**

## **December 2003**



**US Army Corps  
of Engineers**  
Omaha District

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**MISSOURI RIVER MITIGATION**

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|  |   |  |                                   |                             |
|--|---|--|-----------------------------------|-----------------------------|
| <b>SOLICITATION, OFFER,<br/>AND AWARD</b><br>(Construction, Alteration, or Repair) | 1. SOLICITATION NO.<br><br>W9128F-04-R-0004 | 2. TYPE OF SOLICITATION<br><br><input type="checkbox"/> SEALED BID (IFB)<br><input checked="" type="checkbox"/> NEGOTIATED (RFP) | 3. DATE ISSUED<br><br>01 Dec 2003 | PAGE OF PAGES<br><br>1 of 2 |
|--|---|--|-----------------------------------|-----------------------------|

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<br><br>U S ARMY ENGINEER DISTRICT, OMAHA<br>106 SOUTH 15TH STREET<br>OMAHA, NE 68102-1618 | CODE<br><br>CT                      | 8. ADDRESS OFFER TO<br><br>US ARMY CORPS OF ENGINEERS<br>Attn: CONTRACTING DIVISION (CENWO-CT)<br>106 SOUTH 15TH STREET<br>OMAHA, NE 68102-1618 |
| 9. FOR INFORMATION CALL:   | A. NAME<br><br>Diana Vanderzanden   | B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS)<br><br>(402) 221-4044   |

**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:  
  
Missouri River Mitigation, Nebraska, Iowa, Kansas, & Missouri.

RETURN WITH PROPOSAL: INFORMATION REQUIRED BY; SECTION 00010 (SF1442); AND SECTION 00600  
OTHER BONDING INFORMATION: SEE CONTRACT CLAUSES CLAUSE "PERFORMANCE AND PAYMENT BONDS".

11. The Contractor shall begin performance within 10 calendar days and complete it within \*\* calendar days after receiving  
 award,  notice to proceed. This performance period is  mandatory,  negotiable. (See \*\*Section 00800, pg 1 .)

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

12B. CALENDAR DAYS

13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and 2 copies to perform the work required are due at the place specified in Item 8 by 1400 (hour) local time 05 Jan 2004 (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)<br><br>DUNS Number: _____<br><br>CODE _____ FACILITY CODE _____ | 15. TELEPHONE NO. (Include area code)<br><br>16. REMITTANCE ADDRESS (Include only if different than Item 14) |
|--|--|

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**

Entire Work, Complete \$ \_\_\_\_\_ (Not Applicable for Basic Contract, See Individual Task Orders)  
 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<br>(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<br>(4 copies unless otherwise specified) | ITEM<br><b>26</b> | 25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO<br><input type="checkbox"/> 10 U.S.C. 2304(c) ( ) <input type="checkbox"/> 41 U.S.C. 253(c) ( ) |
|--|-------------------|--|

|  |   |
|--|---|
| 26. ADMINISTERED BY<br>US ARMY ENGINEER DISTRICT, OMAHA<br>106 SOUTH 15TH STREET<br>OMAHA, NE 68102-1618 | 27. PAYMENT WILL BE MADE BY<br>USAED OMAHA<br>C/O USACE FINANCE CENTER<br>5722 INTEGRITY DRIVE<br>MILLINGTON, TN 38054-5005 |
|--|---|

**CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE**

|   |  |
|---|--|
| <input type="checkbox"/> <b>28. NEGOTIATED AGREEMENT</b> (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. | <input type="checkbox"/> <b>29. AWARD</b> (Contractor is not required to sign this document.) Your offer on this solicitation, is hereby accepted as to the items listed. This award commutes the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary. |
|---|--|

|  |  |
|--|--|
| 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                                  |

SECTION 00100

INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS  
(July 2000, Revised May 2003)

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SECTION 00100

INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

**1 SOLICITATION RESTRICTIONS.**

**1.1 GENERAL CONTRACTOR.**

This solicitation is unrestricted and open to both large and small business participation. The small business size standard for this solicitation is \$28.5 Million under NAICS code 237990.

**1.2 ESTIMATED CONSTRUCTION COST.**

The estimated construction cost of this program is \$36 million. Minimum guarantee is 2% of \$20 Million (\$400,000) for a three-year base period and 1% of \$16 million (\$160,000) for a 2-year option period.

**1.3 RETURN ADDRESS REQUIREMENTS**

Offeror(s) must ensure that ALL mail sent to the Omaha District, U.S. Army Corps of Engineers, either pre-contract or post-contract award, has a return mailing address on the outside of the envelope, package, box, etc. ANY MAIL addressed to the U.S. Army Corps of Engineers, including but not limited to bids, modifications to bids, proposals, revised proposals, bonds, correspondence, etc., will be REJECTED by the US Army Corps of Engineers mail room facility located at 106 South Street, Omaha, Nebraska 68102-1618 if it does not contain a return mailing address. **There will be no exceptions.**

**2 (FAR 52.217-5) EVALUATION OF OPTIONS (JUL 1990).**

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

**3 (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)

**4 (FAR 52.215-1) INSTRUCTIONS TO OFFERORS--COMPETITIVE ACQUISITION (MAY 2001)**

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

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

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

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

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

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

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

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

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

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

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror’s behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent’s authority, unless that evidence has been previously furnished to the issuing office.

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

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

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

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

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

(3) It is the only proposal received.

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

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

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

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

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

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

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

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

(8) Proposals may be withdrawn at any time before award.

Withdrawals are effective upon receipt of notice by the Contracting Officer.

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

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

(1) Mark the title page with the following legend:

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

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

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

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

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

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

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

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

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

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

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

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

(11) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

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

(iii) A summary of the rationale for award; and

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

(End of provision)

## **5 CHANGES PRIOR TO RECEIVING OFFERS**

The right is reserved, as the interest of the Government may require, to revise the specifications and/or Request For Proposal drawings prior to the date set for receiving offers. Such revisions will be announced by an amendment or amendments to this Request For Proposal. **It shall be the responsibility of the prospective offeror, subcontractor or supplier 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 offerors know that an amendment has been issued.

## **6 (FAR 52.216-1) TYPE OF CONTRACT (APR 1984).**

The Government contemplates award, using a multiple award indefinite delivery type contract, to 2 to 4 Contractors selected on a best value basis. Firm fixed task orders will be competed. (End of provision)

## **7 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER**

(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](mailto:globalinfo@mail.dnb.com).

#### **8 SMALL BUSINESS SIZE STANDARD.**

The small business size standard is gross annual receipts for its preceding 3 fiscal years did not exceed \$28.5 million.

#### **9 NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS).**

In accordance with Sector 23 of the NAICS Manual, the work in this solicitation is assigned classification code 237990.

#### **10 (FAR 52.236-28) PREPARATION OF PROPOSALS—CONSTRUCTION (OCT 1997)**

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

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

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

(c) If the solicitation requires submission of a proposal on all items, failure to do so may result in the proposal being rejected without further consideration. If a proposal on all items is not required, offerors should

insert the words "no proposal" in the space provided for any item on which no price is submitted.

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

(End of provision)

**11 (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.

**12 (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 Larry Gann at 402-293-2564.

(c) Site Visits for each individual task order will be offered when each task order is issued.

**13 OFFEROR'S QUESTIONS AND COMMENTS.**

Questions and/or comments relative to these documents should be submitted via e-mail or mailed to: U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO-CT-[C][M] 106 South 15th Street, Omaha, NE 68102-1618. Comments should reach this office no later than 20 calendar days prior to the date set for receiving of proposals, if feasible, in order that changes, if needed, may be added by amendment. E-mail addresses, FAX numbers, items for question and points of contact are listed below. Phone calls with questions should be made between 8:30 a.m. and 3:30 p.m. (Central Standard Time) Monday through Friday.

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

| <u>Items for Question</u>   | <u>Points of Contact/<br/>Phone numbers/<br/>FAX Numbers</u>                | <u>E-mail Addresses</u>             |
|---|---|-------------------------------------|
| Contractual Matters:<br>Ordering CD-Rom of<br>the proposal<br>documents<br>(limit One per firm)/<br>amendments**/<br>Receipt of Proposals | Diana Vanderzanden<br>402-221-4044 (phone)<br>402-221-4199 (fax)            | Diana.L.Vanderzanden@usace.army.mil |
| Planholder's List   | See paragraph: PLAN<br>HOLDER'S LIST, below.                                |                                     |
| Small Business<br>Matters   | Hubert Carter<br>402-221-4110 (phone)                                       | hubert.j.carter@usace.army.mil      |
| Technical Contents<br>Of Proposal<br>Documents  | Micheal Barnes<br>402-221-4065 (phone)                                      | Micheal.J.Barnes@usace.army.mil     |
| CD-ROM  | Specifications<br>Section<br>Marylee Stobbe<br>402-221-4411<br>402-221-3842 | Marylee.F.Stobbe@usace.army.mil     |
| Site Inspection   | See Paragraph: SITE<br>INSPECTION, above                                    |                                     |

**\*\* - The Government may elect to send a notification that an amendment has been posted to the Government's web address, but is not required to. It shall be the Contractor's, Subcontractor's and Supplier's responsibility to check the Government's web address for amendments.**

#### **13.1 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 offeror'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/>

#### **14 GENERAL DESCRIPTION OF WORK.**

All work will be done within the Missouri River flood plain between Sioux City, IA and Kansas City, MO. with the majority of work occurring within Omaha District boundaries. Individual task orders will be competed. Scope of work will vary with each work order. Work may consist of, but not limited to, soil excavation, dredging, rock placement and clearing and grubbing. Work shall be in accordance with plans and specifications issued with each task order.

**15 IOWA SALES AND USE TAX.**

The Contractor shall be responsible for payment of Iowa Sales and Use taxes with respect to all materials used under this contract. SECTION 00800: SPECIAL CONTRACT REQUIREMENTS, clause "IOWA SALES AND USE TAX," requires the Contractor to furnish to the Contracting Officer the statement required by Section 422.45 (7a), Iowa Code annotated, and to include in subcontracts and purchase orders a clause insuring submission of the statement by first-tier subcontractors and suppliers and their subcontractors and suppliers. Telephone: (515) 281-3114 (Department of Revenue).

**16 TAXES - STATE OF SOUTH DAKOTA.**

**16.1 EXCISE TAX.**

There is an excise tax on the total gross receipts of all prime contractors and subcontractors engaged in realty improvement contracts.

**16.2 USE TAX.**

Government furnished construction material used by the Contractor in the performance of the work is subject to use tax. The value of the material furnished is set forth in the SECTION 00800, SPECIAL CONTRACT REQUIREMENTS clause "Government-Furnished Property."

**16.3 INFORMATION.**

The "excise" and "use" taxes shall be included in the price or prices bid. For information concerning the taxes contact: Sales and Use Tax Division, Capital Lake Plaza, Pierre, South Dakota. Telephone 605-773-3311.

**17 NEBRASKA SALES AND USE TAX.**

Materials installed under this contract are not exempt and the tax must be included in the amount bid. Telephone: (402) 595-2065 (Department of Revenue-Omaha).

**18 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 2003 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 technically acceptable - low price offeror 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. Offerors 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 technically acceptable - low price offeror (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.** A technically acceptable - low price offeror 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: OFFEROR QUESTIONS AND COMMENTS, Contract Specialist or the District's Deputy for Small Business [Small Business] or fax your inquiries to 402-221-4199).

## **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](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

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**SECTION 00110**

**PROPOSAL SUBMITTALS AND EVALUATION**  
**Request for Proposal No.W9128F-04-R-0004**  
**IDIQ Construction Contract for the Missouri River Mitigation**

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**SECTION 00110**  
**PROPOSAL SUBMITTALS AND EVALUATION**  
Request for Proposal No.W9128F-04-R-0004  
IDIQ Construction Contract for the Missouri River Mitigation

**1. SUBMITTALS AND EVALUATION**

The requirements specified in the solicitation are considered to be minimum requirements. A more favorable evaluation rating may be given for exceeding the minimum requirements. The relative importance of the evaluation factors (tabs) are shown in Table 1 above. Subfactors and items within subfactors are listed in descending order of importance. Note that the evaluation factors, subfactors, and items within subfactors (Tabs 1 through 4) when combined, are approximately equal in importance to Price (Tab 5). A low evaluation rating for any tab, or combination of different tabs, may cause the proposal to be evaluated as unsatisfactory. Price (Tab 5) will be comparatively evaluated for reasonableness and realism after Tabs 1 through 4 are evaluated.

| <b>TABLE 1<br/>EVALUATION FACTORS</b> |   |   |
|---------------------------------------|---|---|
| <b>TAB</b>                            | <b>EVALUTION FACTOR/SUBFACTOR</b>   | <b>RELATIVE IMPORTANCE</b>  |
| <b>Tab 1</b>                          | <b>Technical Capabilities and Equipment</b><br>a. Floating Plant<br>b. Land Based Equipment<br>c. Dredging Equipment  | Significantly more important than Tab 4. Slightly more important than Tab 3.<br>Approximately equal to Tab 2. |
| <b>Tab 2</b>                          | <b>Offeror’s Experience, Past Performance, &amp; Personnel</b><br>a. Construction Experience - River Work Construction<br>b. Past Performance – Construction<br>c. Construction Personnel<br>(1) Prime Construction Personnel<br>(2) Subcontractors | Significantly more important than Tab 4. Slightly more important than Tab 3.<br>Approximately equal to Tab 1. |
| <b>Tab 3</b>                          | <b>Project Management Plan</b><br>a. Management of Subcontractors<br>b. Specific Quality Control Procedures<br>c. Schedule Development and Maintenance<br>d. Affirmative Action Plan<br>e. Health and Safety Record                                 | Slightly more important than Tab 4. Slightly less important than Tabs 1 and 2.                                |
| <b>Tab 4</b>                          | <b>Utilization of Small Business Concerns (Large Businesses Only)</b>   | Significantly less important than Tabs 1 and 2. Slightly less important than Tab 3.                           |
| <b>Tab 5</b>                          | <b>Price</b>  | Approximately equal to the combined importance of Tabs 1 through 4.   |

Price (Tab 5) is approximately equal to the combined importance of all other evaluation factors

## **1.1 TAB 1 – TECHNICAL DATA**

### **1.1.1 SUBMITTAL**

The Offeror shall demonstrate their capabilities to perform “river projects” using floating plant, land based equipment, and dredging equipment.

The Offeror shall identify all proposed **Betterments** (products, equipment, systems, etc) that exceed the basic requirements of the solicitation. This includes consideration of the items listed in the attached form and any other items furnished as part of the construction and delivery of the housing units. Any betterment included in the Offeror's proposal that is applicable to housing units shall be applicable for all the housing units. See Section 01001 GENERAL REQUIREMENTS for list and priority of betterments.

The Offeror shall provide a list of all other deviations, deemed necessary by the Offeror, to achieve cost limitations, meet statutory requirements, and/or are mandatory due to technical flaws in the solicitation (i.e. performance, structural integrity, safety, maintainability, applicable code requirements, etc) in order to deliver the intended basic requirements of the solicitation. Each deviation shall include an explanation of why the Offeror believes the deviation is necessary.

### **1.1.2 EVALUATION**

Consideration will be based on compliance with the RFP requirements and the sub-factors listed below. The ability to perform multiple, simultaneous “river projects” with stated products, supplies, equipment and systems will be evaluated more favorably.

#### **(a) FLOATING PLANT**

*Outstanding:* The offeror has demonstrated the capability to perform multiple, simultaneous projects that require the use of floating plant/marine plant. In order to qualify, the offeror must possess the means to transport via waterway, multiple support equipment such as barges, draglines, etc.

*Good:* The offeror has demonstrated the capability to construct various projects, and also has extraneous equipment that, when coupled with minimal outside sources, will allow the offeror to perform more than one simultaneous project.

*Satisfactory:* The offeror maintains floating equipment necessary to construct single project within specified time constraints.

*Marginal:* The offeror maintains limited floating equipment, but still may be able to construct single project given additional duration.

*Unsatisfactory:* The offeror has not performed on projects requiring floating plant, or has failed to demonstrate the capability to perform the most simple projects requiring floating plant.

#### **(B) LAND-BASED EQUIPMENT**

*Outstanding:* The offeror has demonstrated the capability to perform multiple, simultaneous projects that require the use of land based plant.

*Good:* The offeror has demonstrated the capability to construct various projects, and also has extraneous equipment that, when coupled with minimal outside sources, will allow the offeror to perform more than one simultaneous project.

*Satisfactory:* The offeror maintains equipment necessary to construct single project within specified time constraints.

*Marginal:* The offeror maintains limited equipment, but still may be able to construct single project given additional duration.

*Unsatisfactory:* The offeror has not performed on projects requiring land based, or has failed to demonstrate the capability to perform the most simple projects requiring land based plant.

### **(C) DREDGING EQUIPMENT**

*Outstanding:* The offeror has demonstrated the capability to perform multiple, simultaneous projects that require the use of dredge plant.

*Good:* The offeror has demonstrated the capability to construct various projects, and also has extraneous equipment that, when coupled with minimal outside sources, will allow the offeror to perform more than one simultaneous project.

*Satisfactory:* The offeror maintains equipment necessary to construct single project within specified time constraints.

*Marginal:* The offeror maintains limited equipment, but still may be able to construct single project given additional duration.

*Unsatisfactory:* The offeror has not performed on projects requiring dredge plant, or has failed to demonstrate the capability to perform the simplest projects requiring dredge plant.

The Offeror will be evaluated on the priority and number of Betterments proposed. The Government believes the solicitation requirements are technically sound, comply with all statutory requirements, and are awardable within the specified cost limitation. Higher evaluations will be assigned based on the number and priority of Betterments proposed. Deviations other than Betterments that, in the Government's evaluation, negatively conflict with the solicitation requirements may be evaluated unfavorably or even result in rejection of the proposal as non-responsive.

Deviations that, in the Government's evaluation, negatively conflict with the solicitation requirements may be evaluated unfavorably or even result in rejection of the proposal as non-responsive.

## **1.2 TAB 2 - OFFEROR'S EXPERIENCE, PAST PERFORMANCE, AND PERSONNEL**

### **1.2.1 SUBMITTAL**

Tab 2 consists of three sub-elements. In descending order of importance, these are Construction Experience - River Work Construction, Past Performance - Construction, and Construction Personnel.

#### **(a) OFFEROR'S CONSTRUCTION EXPERIENCE - River Work Construction**

For Company experience, the Offeror shall provide a list of three "river projects" that consisted of soil excavation and/or dredging, rock placement and clearing and grubbing. Project examples should have a dollar value greater than \$100,000, have been completed in the last 5 years (or are substantially complete at the time of this offer). Only those projects for which the Offeror was the prime contractor should be submitted. Project examples should consist of a (1) description of work, (2) contract award amount, (3) location, (4) project start date and (5) completion date.

## **(b) PAST PERFORMANCE-CONSTRUCTION**

The Offeror shall provide past performance information for each project listed in the Offeror's experience. All examples should contain the name, address, telephone number and fax number of a current representative of the contact customer representative. The Government will consider information submitted by the Offeror, as well as any other source (including information from Government personnel and databases). Government will evaluate the currency and relevancy of the information, which may help the Government assess performance risk.

## **(c) CONSTRUCTION PERSONNEL**

(1) Prime Construction Personnel. The Offeror shall submit the prime contractor's organization chart indicating key construction personnel. A summary of duties and responsibilities of these individuals shall be included. As a minimum the summary must include the positions of Project Manager, Project Superintendent and Contractor Quality Control (CQC) System Manager that will be assigned to this project. Resumes for these positions shall also be provided. They must include examples of project experience (including what capacity the individual served on each project), as well as the dates employed on each project, and the monetary size of each project cited as experience. Educational qualifications of the proposed personnel are also required. Prior experience on "river projects" is preferred and will be evaluated more favorably.

(2) Sub-Contractors. The Offeror shall provide resumes of the proposed sub-contractors used to execute "river projects". Each resume shall consist of a brief description of the company and services provided along with number of years in business. The Offeror shall also provide the number of projects contracted between the prime contractor and the sub-contractor.

## **1.2.2 EVALUATION**

### **(a) CONSTRUCTION EXPERIENCE - RIVER WORK CONSTRUCTION**

*Outstanding:* The Offeror provides three or more "river projects", all over \$500,000 completed within the last 5 years where the Offeror was the prime contractor and each project example provided all the information requested.

*Good:* The Offeror provides three "river projects", all over \$500,000, completed within the last 5 years where the Offeror was the prime contractor and each project example provided all the information requested.

*Satisfactory:* The Offeror provides three "river projects", all over \$100,000, completed within the last 5 years where the Offeror was the prime contractor and each project example provided all the information requested.

*Marginal:* The Offeror provides two "river projects", each over \$100,000, completed within the last 5 years where the Offeror was the prime contractor and each project example provided all the information requested.

*Unsatisfactory:* The Offeror provides one "river project", over \$100,000, completed within the last 5 years where the Offeror was the prime contractor and each project example provided all the information requested.

### **(b) PAST PERFORMANCE - CONSTRUCTION**

*Outstanding:* All "river projects performed without issues and considered outstanding by customer representatives.

*Good:* A minimum of one "river project" rated above average and remaining projects rated a minimum satisfactory by customer representatives.

*Satisfactory:* All "river projects" rated satisfactory or better by customer representatives.

*Marginal:* A minimum of two “river projects” rated satisfactory or better and one unsatisfactory rating by customer representatives.

*Unsatisfactory:* Greater than two unsatisfactory ratings on “river projects” by customer representatives.

### **(c) CONSTRUCTION PERSONNEL**

#### **(1) PRIME CONSTRUCTION PERSONNEL**

*Outstanding:* The Offeror provides the organization chart, summary of duties for minimum project personnel and resumes for these individuals with required information. The Project manager is a degreed engineer or graduate construction manager with at least 8 years of experience as a Project Manager on similar “river projects”. The Project Superintendent is an experienced construction person having at least 20 years of experience as a Project Superintendent on similar “river projects”. The CQC System Manager has a minimum 8 years of experience on similar “river projects”.

*Good:* The Offeror provides the organization chart, summary of duties for minimum project personnel and resumes for these individuals with required information. The Project manager is a degreed engineer or graduate construction manager with at least 4 years of experience as a Project Manager on similar “river projects”. The Project Superintendent is an experienced construction person having at least 10 years of experience as a Project Superintendent on similar “river projects”. The CQC System Manager has a minimum 4 years of experience on similar “river projects”.

*Satisfactory:* The Offeror provides the organization chart, summary of duties for minimum project personnel and resumes for these individuals with required information. The Project manager is a degreed engineer or graduate construction manager with at least 2 years of experience as a Project Manager on similar “river projects”. The Project Superintendent is an experienced construction person having at least 5 years of experience as a Project Superintendent on similar “river projects”. The CQC System Manager has a minimum 2 years of experience on similar “river projects”.

*Marginal:* The Offeror provides the organization chart, summary of duties for minimum project personnel and resumes for these individuals with required information. The Project manager is a degreed engineer or graduate construction manager with at least 2 years of experience as a Project Manager. The Project Superintendent is an experienced construction person having at least 5 years of experience as a Project Superintendent. The CQC System Manager has a minimum of 1 year of experience.

*Unsatisfactory:* The Offeror provides the organization chart, summary of duties for minimum project personnel and resumes for these individuals with required information. The Project Manager, the Project Superintendent and the CQC System Manager have a combined total of less than 8 years of experience. IDIQ Construction Contract for the Missouri River Mitigation

#### **(2) SUBCONTRACTOR PERSONNEL**

*Outstanding:* The Offeror provides required sub-contractor resumes with a description of the company, services provided by the subcontractor, sub-contractor years in business and number of contracts between the prime contractor and sub-contractor. The average sub-contractors years in business must be at least 10 and the average number of contracts between the prime and sub-contractor must be at least 4.

*Good:* The Offeror provides required sub-contractor resumes with a description of the company, services provided by the sub-contractor, subcontractor years in business and number of contracts between the prime contractor and sub-contractor. The average subcontractors years in business must be at least 7 and the average number of contracts between the prime and subcontractor must be at least 2.

*Satisfactory:* The Offeror provides required subcontractor resumes with a description of the

company, services provided by the sub-contractor, sub-contractor years in business and number of contracts between the prime contractor and subcontractor. The average sub-contractors years in business must be at least 5 and the average number of contracts between the prime and sub-contractor must be at least 1.

*Marginal:* The Offeror provides required sub-contractor resumes with a description of the company, services provided by the subcontractor, sub-contractor years in business and number of contracts between the prime contractor and sub-contractor. The average sub-contractors years in business must be at least 5 and the average number of contracts between the prime and sub-contractor is equal to 0.

*Unsatisfactory:* The Offeror provides required sub-contractor resumes with a description of the company, services provided by the subcontractor, sub-contractor years in business and number of contracts between the prime contractor and subcontractor. The average sub-contractors years in business are less than 5 and the average number of contracts between the prime contractor and sub-contractor is equal to 0.

### **1.3 TAB 3 - PROJECT MANAGEMENT PLAN**

#### **1.3.1 SUBMITTAL**

The Offeror should provide a comprehensive PMP developed specifically for this project. The information in the PMP should make it clear that the Offeror has the ability to deliver a quality product and effectively manage the consultants and subcontractors on the team, as well as the ability to coordinate all work throughout the construction phases. The PMP should include an explanation of the total project team management approach for the construction team. It should include: management of firms included within the construction team, specific quality control procedures used, schedule development, and methods to be utilized to adhere to the schedule. In addition, it should address the acquisition of environmental permits in a timely fashion, safety, preparation and contract closeout. It should discuss how the team will support the Contractor during construction.

As a minimum, the PMP must address the following sub-factors: (a) method of management of all subcontractors, (b) specific quality control procedures, (c) schedule development and methods used to maintain the schedule, (d) affirmative action plan, and (e) health and safety record.

**Affirmative Action Plan** Offeror should provide an Affirmative Action Plan to ensure compliance with the provisions and clauses of this solicitation to promote the full realization of equal employment opportunity for all persons regardless of race, color, religion, sex or national origin. The Plan should list any debarment from Government contracts (including extensions or modifications) for failure to carry out personnel and employment policies in compliance with EO 11246 and the regulations of the Secretary of Labor. The Offeror should also list **any** referrals of any matter arising under EO 11246 to the Department of Justice (DOJ) or to the Equal Employment Opportunity Commission (EEOC) for inappropriate civil or criminal proceedings.

**Health and Safety Records:** The Offeror should submit OSHA Form 200 showing the incident rates (averaged over the past five years).

#### **1.3.2 EVALUATION**

TAB 3 sub-factors will be evaluated as follows:

*Outstanding:* The Offeror demonstrates an effective plan for construction. The PMP addresses all five components in a thorough and comprehensive manner.

*Good:* The Offeror demonstrates an effective plan for construction. The PMP addresses four of the five components in a thorough and comprehensive manner.

*Satisfactory:* The Offeror demonstrates an effective plan for construction. The PMP addresses three of the five components in a thorough and comprehensive manner.

*Marginal:* The Offeror demonstrates a plan for construction. The PMP addresses two of the five components in a thorough and comprehensive manner.

*Unsatisfactory:* The Offeror demonstrates a plan for construction. The PMP addresses one of the five components in a thorough and comprehensive manner.

#### **1.4 TAB 4 – UTILIZATION OF SMALL BUSINESS CONCERNS (Large Business Only)**

##### **1.4.1 SUBMITTAL**

In TAB 4, the Offeror should either: 1) Identify itself as a small business under the NAICS classification and size standard stated in Section 00100 INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS, or 2) If a large business, submit the required information listed below:

**(a) Definitions:**

(1) Small Business Concerns. For the purpose of this section, small business concerns refer to Small Business, Small Disadvantaged Business, Women-owned Small Business, HUBZone Small Business, Service Disabled Veteran Owned Small Businesses and Historically Black College and University and Minority Institutions.

(2) Prime Contractor. For the purpose of this section, a prime contractor refers to both large and small contractors.

(3) Offeror: For the purpose of this section, Offeror refers to both large and small contractors.

(4) Floor: "Floor" is the term the U.S. Army Corps of Engineers use to replace goal. It represents the minimum level for small business performance.

**(b) The Offeror's (if a large business) proposal should demonstrate the utilization and participation of small business concerns. The proposal should clearly state factors that demonstrate a strong commitment to use small business concerns. This tab, as a minimum, should include:**

(1) Development of percentage floors based on planned subcontracting, which is challenging yet realistic. The following floors are considered reasonable and obtainable for requirements awarded in Fiscal Year 2002.

(i) 57.2% of planned subcontracting dollars to be placed with all small business concerns.

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

(iii) 8.1% of planned subcontracting dollars to be placed with women-owned small business concerns.

(iv) 3% of planned subcontracting dollars to be placed with Service-Disabled Veteran owned small business.

(v) 3% of planned subcontracting dollars to be placed with HUBZones

(2) Past Performance in Meeting Small Business Floors. Demonstrate how floors for SB, SDB, WOSB, SDVOSB, and HUBZone participation were satisfied on previous contracts. Extent to which the prime has historically been successful in establishing realistic yet challenging goals and evidences ability to achieve them. The Offeror should submit data on Past Performance in meeting small business goals which will demonstrate how goals for small business concerns participation on previous contracts was satisfied. The data to be provided should include: (1) Client/Customer (2) Contract/Identification Number (3) Project Description (4) Contract Amount (5) Reference or Point of Contract (to include address and telephone number).

(3) Demonstrate utilization and participation of small business concerns, clearly stated factors that demonstrate strong commitments to use SB, SDB, WOSB, SDVOSB, and HUBZone concerns as team members, subcontractors, and/or suppliers.

(4) Description of supplies and services to be subcontracted and planned for subcontracting to SB, SDB, WOSB, SDVOSB, and HUBZone concerns.

(5) Assurances that the Offeror will include the clause at FAR 52.219-8, Utilization of Small Business Concerns in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require subcontractor (including small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction) to adopt a small business participation program similar to the requirements of the resultant contract.

#### **1.4.2 EVALUATION**

Paragraph 1.4.1 above lists subfactors in descending order of importance. Offerors who are small business concerns will receive the highest evaluating rating. Offerors who propose subcontracting floors that exceed the suggested floors will receive a more favorable evaluation than Offerors with floors that merely meet the suggested floors. Offerors will be evaluated on their proposed utilization and participation of small business concerns as team members, subcontractors, and/or suppliers in the resulting contract. The Offeror's will be evaluated on its commitments that small business concerns will have maximum subcontracting opportunities. Enforceable commitments to use small business concerns will receive more favorable evaluations than non-enforceable commitments. The evaluation for UTILIZATION OF SMALL BUSINESS CONCERNS is separate and distinct from the requirement at FAR Clause 52.219-9, Small Business Subcontracting Plan.

*Outstanding:* Offeror is a small business concern or significantly exceeds the suggested floors.

*Good:* Offerors who propose subcontracting dollars to be placed that exceed the suggested floors.

*Satisfactory:* Offerors who propose subcontracting dollars to be placed that meet the suggested floors.

*Marginal:* Offerors who propose subcontracting dollars to be placed that do not meet the suggested floors.

*Unsatisfactory:* Offerors who do not address subcontracting dollars or fail to meet any of the suggested floors.

#### **1.4.3 SMALL BUSINESS SUBCONTRACTING PLAN**

After the source selection process, the Offeror (if a Large Business and is the apparent successful Offeror) will be requested to demonstrate, through submission of a Small Business Subcontracting Plan in accordance with FAR 52.219-9, how the firm plans to identify, commit and utilize Small Business (SB), Small Disadvantaged Business (SDB), HUBZone Small Business, Women owned Small Business (WOSB) concerns, and Service Disabled Veteran Owned Businesses concerns as team members, subcontractors and/or suppliers in the performance of the resultant contract of this solicitation. It is the policy of the U.S. Army Corps of Engineers, Omaha District (CENWO) that small business concerns have the maximum practicable opportunity to participate in performing contracts let by the Contracting Activity (CENWO-CT). It is further the policy of the CENWO that it's prospective prime contractors, (large businesses only), demonstrate the extent they plan to utilize small business concerns in any resultant contract and provide assurance in its offer that small business concerns will have maximum subcontracting opportunities in its prime contracts.

If the apparent successful Offeror (if a large business) fails to negotiate a subcontracting plan with floors/goals acceptable to the Government within the time limit prescribed by the Contracting Officer, the apparent successful Offeror will be ineligible for receiving a contract award.

## **1.5 TAB 5 – PRICE**

### **1.5.1 SUBMITTAL**

In Tab 5, the Offeror should submit the following information:

**(a) Section 00010, Solicitation/Contract Form and Pricing Schedule.** The total cost for the construction will be considered for evaluation, including all options if applicable. The proposed prices for construction of the Missouri River Mitigation contract will be used in evaluation of a competitive range, if one is established.

**(b) Section 00600, Representations, Certifications and Other Statements of Offerors.** This item is not considered for the SSEB evaluation, but will be evaluated to determine an Offeror's responsiveness.

### **1.5.2 EVALUATION**

Note that all evaluation factors other than Price, when combined, are approximately equal to the Price evaluation. Price will be evaluated by the Government considering price reasonableness. A comparison of proposed price versus other proposals and the Government Estimate will allow evaluation of price reasonableness.

## **1.6 PROPOSAL GUIDELINES**

Request that pages containing text be consecutively numbered, doubled-spaced, typewritten or typeset, single sided, on 8 ½ x 11 paper with adequate margins of at least one inch. Request pages placed in loose-leaf binders to facilitate incorporation of the proposal into the final contract document. It is the offeror's responsibility to insure that his/her proposal is complete prior to submittal.

## **1.7 EVALUATION PROCESS**

### **1.7.1 GENERAL**

The Government intends to award one firm fixed price contract for the rewind and restack of generator 3 at the Fort Peck Powerhouse. Award will be made to that responsive, responsible offeror whose proposal, conforming to the solicitation, is fair and reasonable, and has been determined to be the most advantageous to the Government, technical, price, and other factors considered.

### **1.7.2 SOURCE SELECTION BOARD**

The Contracting Officer will establish an evaluation board to conduct an evaluation of each proposal received. The board will consist of technical and procurement personnel. The evaluation will be based on the proposal and any subsequent negotiation required. The evaluation board will not consider any information or data incorporated by reference or otherwise referred to. The source selection board for the Government may evaluate solely on the information provided by the proposal and will not assume that an offeror possesses any capability unless specified in the proposal.

### **1.7.3 EVALUATION AND DISCUSSION**

All offers received in response to this solicitation will be evaluated in accordance with the requirements of paragraph 1.1. PROPOSAL COMPOSITION AND EVALUATION FACTORS. Upon completion of proposal evaluation, the source selection board will determine if discussions are required. If required, the Government may

establish a competitive range for the purpose of conducting written or verbal discussions. Offerors submitting proposals determined outside of the competitive range (lacking a reasonable chance of being selected for contract award) will be notified in writing at the earliest practicable time. The primary objective of discussions is to maximize the government's ability to obtain the best value, based on the requirements and the evaluation factors set forth in this solicitation. During the discussions, the contracting officer shall indicate to, or discuss with, each offeror still being considered for award the significant weaknesses, deficiencies, and other aspects of their proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposals potential for award. The scope and extent of discussions are a matter of the Contracting Officers judgment. The Government intends to award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Offeror's best terms from a cost or price and technical standpoint.

#### **1.7.4 DEBRIEFING**

All offerors shall be afforded a debriefing. Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing prior to award in accordance with FAR 15.505. The written request shall be submitted to the contracting officer within three days after receipt of the notice of exclusion. Post-Award Debriefings in accordance with FAR 15.505 are available upon written request within three days of notice of contract award. Note only one debrief will be afforded each offeror, regardless of type of debriefing requested.

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SECTION 00600  
REPRESENTATIONS, CERTIFICATIONS & OTHER STATEMENTS OF OFFERORS

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SECTION 00600  
REPRESENTATIONS, CERTIFICATIONS & OTHER STATEMENTS OF OFFERORS

The bidder (offeror) makes the following certification and representations as a part of the proposal, 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. TAXPAYER IDENTIFICATION (Local Provision).**

(a) Definitions.

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

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

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

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

(d) Taxpayer Identification Number (TIN).

TIN: \_\_\_\_\_.

TIN has been applied for.

TIN is not required because:

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

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR 1.6049-4;

Other \_\_\_\_\_.

(f) Common parent.

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

Name and TIN of common parent:

Name \_\_\_\_\_

TIN \_\_\_\_\_  
(End of provision)

**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. RESERVED**

**9. (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 a veteran-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)

## 10. RESERVED

## 11. (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           |

**12. (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           |

**13. (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)

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

(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)

**15. (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)

**16. (FAR 52.223-13) CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)  
[For Contracts over \$100,000]**

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

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

(1) As the owner or operator of 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 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 to the Form R filing and reporting requirements because each such 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 in 40 CFR 372.65;

(ii) The facility does not have 10 or more fulltime 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 the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094).

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(v) The facility is not located in the United States or its outlying areas..

(End of provision)

**17. (DFARS 252.225-7031) SECONDARY ARAB BOYCOTT OF ISRAEL (APR 2003)**

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

(1) "Foreign person" means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.

(2) "United States person" is defined in 50 U.S.C. App. 2415(2) and means-

(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) *Certification.* If the offeror is a foreign person, the offeror certifies, by submission of an offer, 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. 2407(a) prohibits a United States person from taking.  
(End of Provision)

**18. (DFAR 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.

**19. CONTRACTOR'S CERTIFICATION (Reference FAR 4.102) (Local Provision)**

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

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

\_\_\_\_\_ (Signed)

An individual doing business as

\_\_\_\_\_

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

\_\_\_\_\_ is a partnership composed of  
(Firm Name)

\_\_\_\_\_  
(List All Partners)

\_\_\_\_\_  
(Indicate if any partner is limited in partnership authority)

(c) **CONTRACTS WITH CORPORATIONS**. If the resultant contract is with a corporation, it shall be executed in the corporation name, followed by the word "by" after which the person who has been authorized to

execute the contract on behalf of the corporation shall sign his/her name, with the designation of his/her official capacity. In addition, the following certification shall be completed:

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

In witness whereof, I have hereunto affixed my signature this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
(Signature, Printed Name, Title)

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

The parties hereto expressly understand and agree as follows:

(1) \_\_\_\_\_  
(Name) (Title) (Company)

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

\_\_\_\_\_  
(Name) (Title) (Company as above)

\_\_\_\_\_  
(Name) (Title) (Company of Alternate)

is the alternate principle of the joint venture.

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

\_\_\_\_\_  
(Name) (Title) (Company)

principal representative of the joint venture.

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

SECTION 00700

CONTRACT CLAUSES

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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. RESERVED**

**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 (JUNE 2003)**

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

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

(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. DFARS 252.203-7002 DISPLAY OF DOD HOTLINE POSTER (DEC 1991)  
(For Military Contracts Exceeding \$5,000,000)**

(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.

**13. \*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)

**14. \*FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION (OCT 2003)**

(a) Definitions. As used in this clause—

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

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

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

“Registered in the CCR database” means that—

- (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and
- (2) The Government has validated all mandatory data fields and has marked the record “Active”.

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

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

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

- (1) An offeror may obtain a DUNS number—
  - (i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or
  - (ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

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

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

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

solicitation.

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

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

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

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

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

**15. 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.

**16. DFARS 252.204-7004 ALTERNATE A (NOV 2003)**

As prescribed in 204.1104, substitute the following paragraph (a) for paragraph (a) of the clause at FAR 52.204-7:

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

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

"Commercial and Government Entity (CAGE) code" means-

(1) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization that DLIS records and

maintains in the CAGE master file. This type of code is known as an "NCAGE code."

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

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

"Registered in the CCR database" means that-

- (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database;
- (2) The Contractor's CAGE code is in the CCR database; and
- (3) The Government has validated all mandatory data fields and has marked the records

"Active."

**17. \*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.

**18. 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)

**19. \*FAR 52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (SEP 1990) [For Military Contract's Only]**

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).

**20. ~~DELETED 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.~~

**21. \*FAR 52.215-2 AUDIT AND RECORDS-NEGOTIATION (JUNE 1999)**

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

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

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

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

(4) Performance of the contract, subcontract or modification.

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

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

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

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

(2) The data reported.

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

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

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

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

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

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

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

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

(End of clause)

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

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

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

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

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

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

(1) The actual subcontract; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

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

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

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

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

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

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

(End of clause)

**24. \*FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (DEC 1998)**

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

(b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured,

assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

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

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

(End of clause)

**25. \*FAR 52.215-16 FACILITIES CAPITAL COST OF MONEY (JUNE 2003)**

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in FAR 31.205-10(b) are met. One of the allowability criteria requires the prospective contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

(End of provision)

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

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

(End of clause)

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

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

(End of clause)

**28. \*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 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)

## 29. \*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)

**30. \*FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002) [When Contracting By Negotiations]**

(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;

why not;

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

solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were

not;

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

why not;

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

why not; and

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

(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)

### **31. \*FAR 52.219-16**

### **LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)**

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

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

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

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

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

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

**32. 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.

**33. 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.

**34. DFARS 252.219-7009**

**SECTION 8(a) DIRECT AWARD (MAR 2002)**

(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:

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[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)

**35. 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.

**36. \*FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer. (End of clause)

**37. \*FAR 52.222-3 CONVICT LABOR (JUNE 2003)**

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

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

(ii) Representatives of local union central bodies or similar labor union organizations

have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

**38. \*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)

### 39. \*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.

#### **40. \*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.

#### **41. \*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 copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and

completely all of the information required to be maintained under 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 or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **42. \*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 in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### **43. \*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.

#### **44. \*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.

**45. \*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.

**46. \*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.

**47. \*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.

**48. \*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.

**49. \*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)

**50. \*FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)**

(a) Definitions.

"Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly Federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means--

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by--

- (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;
- (ii) Including the policy in any policy manual and in collective bargaining agreements;
- (iii) Publicizing the policy in the company newspaper, annual report, etc.;
- (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
- (v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Contractor--

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to--

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**51. \*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)

## 52. \*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, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor, including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

### (b) Postings.

- (1) The Contractor agrees to post employment notices stating--
- (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
  - (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of

Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(b) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**53. \*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 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

**54. \*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)

**55. \*FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)**

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

| Material<br>(If none, insert "None") | Identification No. |
|--------------------------------------|--------------------|
| _____                                | _____              |
| _____                                | _____              |
| _____                                | _____              |

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--

- (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
- (ii) Obtain medical treatment for those affected by the material; and
- (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources. (End of clause)

**56. \*FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003) [For Work on Federal Facilities]**

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

“Priority chemical” means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

“Toxic chemical” means a chemical or chemical category listed in 40 CFR 372.65.

(b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

- (1) The emergency planning reporting requirements of Section 302 of EPCRA.
- (2) The emergency notice requirements of Section 304 of EPCRA.
- (3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.
- (4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.
- (5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.
- (6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Sections 502 and 503 of Executive Order 13148.

(End of clause)

**57. \*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.

**58. 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)

**59. \*FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)**  
**[For Contracts Over \$100,000]**

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

- (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;
- (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
- (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
- (4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:
  - (i) Major group code 10 (except 1011, 1081, and 1094.
  - (ii) Major group code 12 (except 1241).
  - (iii) Major group codes 20 through 39.
  - (iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
  - (v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*)), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or
- (5) The facility is not located in the United States or its outlying areas.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt—

- (1) The Contractor shall notify the Contracting Officer; and
- (2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall—
  - (i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
  - (ii) Continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall—

- (1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and
  - (2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).
- (End of clause)

**60. 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.

## 61. \*FAR 52.225-9 BUY AMERICAN ACT—CONSTRUCTION MATERIALS (JUNE 2003) (For Contracts less than \$6.481 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 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, and outlying areas.

(b) *Domestic preference.* (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the

Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American Act.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction

materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

| FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON |                 |          |                  |
|--|-----------------|----------|------------------|
| Construction Material Description                            | Unit of Measure | Quantity | Price (Dollars)* |
| 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).]

**62. \*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)

**63. \*FAR 52.225-11 BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (JUNE 2003) [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 components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Designated country” means any of the following countries:

|                          |                       |
|--------------------------|-----------------------|
| 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, and outlying areas.

(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.

**64. \*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 7.304733 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.

**65. \*FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (OCT 2003)**

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC’s implementing regulations at 31 CFR

chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.epls.gov/Terlist1.html>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's website at <http://www.treas.gov/ofac>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.  
(End of clause)

**66. DFARS 252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (OCT 2003)**

(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 contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

"Native Hawaiian small business concern" means an entity that is-

(1) A small business concern as defined in Section 3 of the Small Business Act (15 U.S.C. 632) and relevant implementing regulations; and

(2) Owned and controlled by a Native Hawaiian as defined in 25 U.S.C. 4221(9).

(b) The Contractor shall use its best efforts to give Indian organizations, Indian-owned economic enterprises, and Native Hawaiian small business concerns the maximum practicable opportunity to participate in the subcontracts it awards, to the fullest extent consistent with efficient performance of the contract.

(c) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status.

(d) In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to-

(1) For matters relating to Indian organizations or Indian-owned economic enterprises:

U.S. Department of the Interior  
Bureau of Indian Affairs  
Attn: Chief, Division of Contracting and  
Grants Administration  
1849 C Street NW, MS-2626-MIB  
Washington, DC 20240-4000.

The BIA will determine the eligibility and will notify the Contracting Officer.

(2) For matters relating to Native Hawaiian small business concerns:

Department of Hawaiian Home Lands  
PO Box 1879  
Honolulu, HI 96805.

The Department of Hawaiian Home Lands will determine the eligibility and will notify the Contracting Officer.

(e) No incentive payment will be made-

- (1) While a challenge is pending; or
- (2) If a subcontractor is determined to be an ineligible participant.

(f)(1) The Contractor, on its own behalf or on behalf of a subcontractor at any tier, may request an incentive payment in accordance with this clause.

(2) The incentive amount that may be requested is 5 percent of the estimated cost, target cost, or fixed price included in the subcontract at the time of award to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(3) In the case of a subcontract for commercial items, the Contractor may receive an incentive payment only if the subcontracted items are produced or manufactured in whole or in part by an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(4) The Contractor has the burden of proving the amount claimed and shall assert its request for an incentive payment prior to completion of contract performance.

(5) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the estimated cost, target cost, or fixed price included in the subcontract awarded to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(6) If the Contractor requests and receives an incentive payment on behalf of a subcontractor, the Contractor is obligated to pay the subcontractor the incentive amount.

(g) The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts exceeding \$500,000 for which further subcontracting opportunities may exist.  
(End of clause)

**67. \*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.

**68. \*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.

**69. \*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.

**70. DFARS 252.227-7022 GOVERNMENT RIGHTS (UNLIMITED) (MAR 1979)**

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer. (End of clause)

**71. DFARS 252.227-7023 DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (MAR 1979)**

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

**72. 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.

**73. \*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.

**74. \*FAR 52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997) [For Contracts Exceeding \$100,000]**

- (a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.
- (b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective
  - (1) for such period as the laws of the State in which this contract is to be performed prescribe,or
  - (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

**75. \*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.

**76. \*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.

**77. 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: \_\_\_\_\_

**78. \*FAR 52.228-15 PERFORMANCE AND PAYMENT BONDS (JULY 2000)**

(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)

**79. FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 2003) [For Contracts Exceeding \$100,000]**

(a) As used in this clause--

"All applicable Federal, State, and local taxes and duties," means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Contract date," means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

## **80. RESERVED**

## **81. FAR 52.230-1 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (JUNE 2000)**

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

### **I. DISCLOSURE STATEMENT--COST ACCOUNTING PRACTICES AND CERTIFICATION**

(a) Any contract in excess of \$500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

CAUTION: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

(1) Certificate of Concurrent Submission of Disclosure Statement

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable, and (ii) one copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: \_\_\_\_\_

Name and Address of Cognizant ACO or Federal Official Where Filed:  
\_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

(2) Certificate of Previously Submitted Disclosure Statement.

The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: \_\_\_\_\_

Name and Address of Cognizant ACO or Federal Official Where Filed:  
\_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

(3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

(4) Certificate of Interim Exemption.

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer,

in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

## II. COST ACCOUNTING STANDARDS--ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

## III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

YES     NO  
(End of provision)

### **82. \*FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998)**

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall--

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of

this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

**83. \*FAR 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1998)**

(a) The Contractor, in connection with this contract, shall--

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard--Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR Part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR 9903.201-6(b), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that--

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

#### **84. 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.

**85. \*FAR 52.232-5  
(SEPT 2002)**

**PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS**

(a) Payment of Price. The Government shall pay the Contractor the contract price as provided in this contract.

(b) Progress Payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if--

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Contractor Certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.) I hereby certify, to the best of my knowledge and belief, that--

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

-----  
(Name)

-----  
(Title)

-----  
(Date)

(d) Refund of Unearned Amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall--

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until--

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) Retainage. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) Title, Liability, and Reservation of Rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as--

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) Reimbursement for Bond Premiums. In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) Final Payment. The Government shall pay the amount due the Contractor under this contract after--

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this

contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Limitation Because of Unfinalized Work. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on unfinalized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) Interest Computation on Unearned Amounts. In accordance with 31 U.S.C. 3903(c)(1), the amount payable under subparagraph (d)(2) of this clause shall be--

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

**86. RESERVED.**

**87. \*FAR 52.232-10 PAYMENTS UNDER FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (AUG 1987)**

(a) Estimates shall be made monthly of the amount and value of the work and services performed by the Contractor under this contract which meet the standards of quality established under this contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by the Contracting Officer.

(b) Upon approval of the estimate by the Contracting Officer, payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable, of 90 percent of the approved amount, less all previous payments; provided, that payment may be made in full during any months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer may release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and acceptance by the Contracting Officer of the work done by the Contractor under the "Statement of Architect-Engineer Services", the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. Upon satisfactory completion and final acceptance of the construction work, the Contractor shall be paid any unpaid balance of money due under this contract.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, 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. (End of clause)

**88. \*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.

**89. \*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.

**90. \*FAR 52.232-26 PROMPT PAYMENT FOR FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (OCT 2003)**

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) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

- (a) *Invoice payments*—(1) *Due date*. The due date for making invoice payments is—
- (i) For work or services completed by the Contractor, the later of the following two events:
    - (A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(iii) of this clause).
    - (B) 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 settlement.
  - (ii) The due date for progress payments is the 30th day after Government approval of Contractor estimates of work or services accomplished.
  - (iii) If the designated billing office fails to annotate the invoice or payment request with the actual date of receipt at the time of receipt, the payment due date is the 30th day after the date of the Contractor's invoice or payment request, provided the designated billing office receives a proper invoice or payment request 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)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will 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) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
  - (ix) Electronic funds transfer (EFT) banking information.
- (A) The Contractor shall include EFT banking information on the invoice only if

required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232–38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) 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, Government acceptance or approval is deemed to occur constructively as shown in paragraphs (a)(4)(i)(A) and (B) of this clause. 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, Contractor compliance with a contract provision, or requested progress payment amounts. 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.

(A) For work or services completed by the Contractor, Government acceptance is deemed to occur constructively on the 7th day after the Contractor completes the work or services in accordance with the terms and conditions of the contract.

(B) For progress payments, Government approval is deemed to occur on the 7th day after the designated billing office receives the Contractor estimates.

(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 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 is 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.

(iii) The additional penalty does not apply to payments regulated by other Government regulations (*e.g.*, payments under utility contracts subject to tariffs and regulation).

(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) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

#### 91. \*FAR 52.232-27 PROMPT PAY FOR CONSTRUCTION CONTRACTS (OCT 2003)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice payments*—(1) *Types of invoice payments.* For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project.

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (*e.g.*, each separate building, public work, or other division of the contract

for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(xi) Any other information or documentation required by the contract.

(3) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract

term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) *Computing penalty amount.* The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(5) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(6) *Additional interest penalty.* (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if—

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible—

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(b) *Contract financing payments.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Subcontract clause requirements.* The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) *Prompt payment for subcontractors.* A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) *Interest for subcontractors.* An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) *Subcontractor clause flowdown.* A clause requiring each subcontractor to

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) *Subcontract clause interpretation.* The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that—

(1) *Retainage permitted.* Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) *Withholding permitted.* Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) *Withholding requirements.* Permit such withholding without incurring any obligation to pay a late payment penalty if—

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) *Subcontractor withholding procedures.* If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) *Subcontractor notice.* Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) *Contracting Officer notice.* Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;

(3) *Subcontractor progress payment reduction.* Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;

(4) *Subsequent subcontractor payment.* Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(i) Make such payment within—

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government;

or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the **Federal Register**, for interest payments

under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) *Notice to Contracting Officer.* Notify the Contracting Officer upon—

- (i) Reduction of the amount of any subsequent certified application for payment; or
- (ii) Payment to the subcontractor of any withheld amounts of a progress payment,

specifying—

(A) The amounts withheld under paragraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) *Interest to Government.* Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until—

- (i) The day the identified subcontractor performance deficiency is corrected; or
- (ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this

clause.

(f) *Third-party deficiency reports—(1) Withholding from subcontractor.* If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a “second-tier subcontractor”) a written notice in accordance with 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 contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.  
(End of clause)

## **92. \*FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER –CENTRAL CONTRACTOR REGISTRATION (OCT 2003)**

(a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) *Contractor EFT arrangements.* If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used

the Contractor's EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in

the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to Subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.  
(End of Clause)

### **93. 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 Unfinalized 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 Unfinalized Contract Actions*) to 95 percent.  
(End of clause)

### **94. 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)

**95. \*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.

**96. \*FAR 52.233-11 DISPUTES (JULY 2002) ALTERNATE I (DEC 1991)**

(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 that 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 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 or relating to the contract, and comply with any decision of the Contracting Officer. (End of clause)

## **97. \*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.

**98. RESERVED.**

**99. 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.

**100. \*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.

**101. \*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.

**102. \*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.

**103. 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.

**104. \*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.

**105. \*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.

**106. 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.

**107. \*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.

**108. \*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.

**109. \*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.

#### **110. \*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.

#### **111. 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.

**112. \*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.

**113. 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.

**114. \*FAR 52.236-23 RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR (APR 1984)**

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(b) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder. (End of clause)

**115. \*FAR 52.236-24 WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS (APR 1984)**

The extent and character of the work to be done by the Contractor shall be subject to the general oversight, supervision, direction, control, and approval of the Contracting Officer. (End of clause)

**116. \*FAR 52.236-25 REQUIREMENTS FOR REGISTRATION OF DESIGNERS (JUNE 2003)**

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work. (End of clause)

**117. \*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.

**118. 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.

**119. \*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.

**120. \*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.

**121. DFARS 252.242-7005 COST/SCHEDULE STATUS REPORT (MAR 1998)**

- (a) The Contractor shall use management procedures in the performance of this contract that provide for--
  - (1) Planning and control of costs;
  - (2) Measurement of performance (value for completed tasks); and
  - (3) Generation of timely and reliable information for the cost/schedule status report (C/SSR).
- (b) As a minimum, these procedures must provide for--
  - (1) Establishing the time-phased budgeted cost of work scheduled (including work authorization, budgeting, and scheduling), the budgeted cost for work performed, the actual cost of work performed, the budget at completion, the estimate at completion, and provisions for subcontractor performance measurement and reporting;

(2) Applying all direct and indirect costs and provisions for use and control of management reserve and undistributed budget;

(3) Incorporating changes to the contract budget base for both Government directed changes and internal replanning;

(4) Establishing constraints to preclude subjective adjustment of data to ensure performance measurement remains realistic. The total allocated budget may exceed the contract budget base only after consultation with the Contracting Officer. For cost-reimbursement contracts, the contract budget base shall exclude changes for cost growth increases, other than for authorized changes to the contract scope; and

(5) Establishing the capability to accurately identify and explain significant cost and schedule variances, both on a cumulative basis and projected at completion basis.

(c) The Offeror/Contractor may use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the earned value management system criteria provided in DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs.

(d) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(e) The Contractor shall provide access to all pertinent records, company procedures, and data requested by the Contracting Officer, or authorized representative, to--

(1) Show proper implementation of the procedures generating the cost schedule information being used to satisfy the C/SSR contractual data requirements to the Government; and

(2) Ensure continuing application of the accepted company procedures in satisfying the C/SSR data item.

(f) The Contractor shall submit any substantive changes to the procedures and their impact to the ACO for review.

(g) The Contractor shall require a subcontractor to furnish C/SSR in each case where the subcontract is other than firm fixed-price, is 12 months or more in duration, and has critical or significant tasks related to the prime contract. Critical or significant tasks shall be defined by mutual agreement between the Government and Contractor. Each subcontractor's reported cost and schedule information shall be incorporated into the Contractor's C/SSR.

(End of clause)

**122. \*FAR 52.243-1 CHANGES--FIXED-PRICE (AUG 1987) ALTERNATE III (AUG 1984)**

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(f) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer. (End of clause)

**123. 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.

**124. DFARS 252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)**

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR Part 31 and DRARS Part 231, in effect on the date of this contract, apply.

**125. DFARS 252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)**

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

-----  
(Official's Name)

-----  
(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including--

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation; and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to---

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

(End of clause)

**126. \*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 Acquisition Regulation (FAR).

"Consent of subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract," means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the the prime contract or a subcontract. It includes, but is not limited to purchase orders, and changes and modifications to purchase orders.

(b) 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 threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified threshold 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)

**127. \*FAR 52.244-4 SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES) (AUG 1998)**

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants. (End of clause)

**128. FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (APR 2003)**

(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 (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract. (End of clause)

**129. \*FAR 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (JUNE 2003) [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 and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

**130. \*FAR 52.245-4 GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (JUNE 2003) [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 and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

**131. \*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.

#### **132. \*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.

### **133. DFARS 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)**

(a) Definitions.

As used in this clause--

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) "Department of Defense" (DOD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime Contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) (1) The Contractor shall use U.S. -flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessel if--

(i) This Contract is a construction contract; or

(ii) The supplies being transported are-

(A) Noncommercial items; or

(B) Commercial items that-

- (1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);
- (2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or
- (3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that--

- (1) U.S.-flag vessels are not available for timely shipment;
- (2) The freight charges are inordinately excessive or unreasonable; or
- (3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum--

- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number, and
- (7) A documented description of efforts made to secure U.S.-flag vessels, including points of

contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information--

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of the steamship company.

(f) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief--

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format;

| ITEM        | CONTRACT   |          |
|-------------|------------|----------|
| DESCRIPTION | LINE ITEMS | QUANTITY |

TOTAL

(g) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) The Contractor shall include this clause, including this paragraph (h) in all subcontracts under this contract that-

- (1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and
- (2) Are for a type of supplies described in paragraph (b) (2) of this clause.

**134. 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.

**135. 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)

**136. \*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.

**137. \*FAR 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)**

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if-

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

- (i) acts of God or of the public enemy,
- (ii) acts of the Government in either its sovereign or contractual capacity,
- (iii) acts of another Contractor in the performance of a contract with the

Government,

- (iv) fires,
- (v) floods,
- (vi) epidemics,
- (vii) quarantine restrictions,
- (viii) strikes,
- (ix) freight embargoes,
- (x) unusually severe weather, or
- (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable

causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

**138. 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.

**139. 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.

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## SECTION 00800

## SPECIAL CONTRACT REQUIREMENTS

5/00, Rev 8/03

## PART 1 GENERAL

## 1.1 INDEFINITE QUANTITY

This is an indefinite quantity contract for Missouri River Mitigation Project in accordance with drawings and specifications as specified herein and effective for a three (3) year period from the date of award, with a two -year option period extending the contract two additional years from date of award. Each Task Order will be issued with a time of completion. Liquidated damages will be assessed as described in paragraph "LIQUIDATED DAMAGES".)

a. Task or performance shall be made only as authorized by orders issued in accordance with the ordering clause. The contractor shall furnish to the Government, when and if ordered, work for the items specified.

b. Except for any limitations on quantities in the task-order limitations clause, there is no limit on the number of orders that may be issued.

c. Any order issued during the effective period of this contract shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract effective period.

## 1.2 LIQUIDATED DAMAGES-CONSTRUCTION

a. If the Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to the Government as liquidated damages, the sum as set out in the task order for each calendar day of delay. Provisions will be included for liquidated damages within each individual Task Order.

b. If the Government terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

c. If the Government does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted. (FAR 52.211-12)

## 1.3 NOT USED

## 1.4 OPTION TO EXTEND THE TERM OF THE CONTRACT

a) The Government may extend the term of this contract by written notice to the Contractor within and up to the expiration of the current performance period; provided; that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

b) If the Government exercises this option, the extended contract shall be considered to include this option provision.

c) The total duration of this contract, including the exercise of any

options under this clause, shall not exceed past 5 years from date of award. (FAR 52.217-9)

#### 1.5 ORDERING

a) Any supplies and services to be furnished under this contract shall be ordered by issuance of task orders by the Contracting Officer. Such orders may be issued from date of award for up to five (5) years, which includes the option years as specified in paragraph 1.4 above.

b) All task orders are subject to the terms and conditions of this contract. In the event of conflict between a task order and this contract, the contract shall control.

c) If mailed, a task order is considered "issued" when the Government deposits the order in the mail. All orders must be in written form (FAR 52.216-18)

#### 1.6 TASK ORDER LIMITATIONS

##### 1.6.1 MINIMUM ORDER

When the Government requires supplies or services covered by this contract in amount of less than \$10,000.00 for any one Task Order, the Government is not obligated to purchase, nor is the Contractor obligated to furnish those items under the contract. (Based on FAR 52.216-19).

##### 1.6.2 MAXIMUM ORDER

The Contractor is not obligated to honor--

(1) Any single Task Order in excess of \$6,000,000.00 from the period of award through 30 September 2006 and any single Task Order in excess of \$6,000,000.00 for the option years specified in paragraph 1.1. above.

(2) Any orders when a combination of Task Orders in effect at any point in time is in excess of \$20,000,000.00 for the period for (3) three years from the Date of Award and any orders when a combination of Task Orders in effect at any point in time is in excess of \$16,000,000.00 for the two year option period specified in paragraph 1.1. above.

(3) A series of orders from the same ordering office within the time periods stated that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

##### 1.6.3 Orders

If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph 1.6.2 above.

##### 1.6.4 Orders

Notwithstanding paragraphs 1.6.2 and 1.6.3 above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph 1.6.2, unless that order (or orders) is returned to the ordering officer within 7 days after issuance, with written notice stating the Contractor's intent not to provide the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

#### 1.7 SUBMITTALS

See Section 01330 - Submittal Procedures.

Government approval is required for submittals with a "G" designation; submittals having no designation are for information only. The following shall be submitted in accordance with Section 01330 SUBMITTAL DESCRIPTIONS:Text

#### 1.8 CONTRACT LIMITATIONS

Minimum Contract.

Basic Years - \$400,000.00  
Option Years - \$160,000.00

Maximum Contract.

Basic Years - \$20,000,000.00  
Option Years - \$16,000,000.00

#### 1.9 PERFORMANCE OF WORK

The Contractor shall, upon receipt of duly executed task orders, perform all work required of this contract for projects described in said delivery orders. The Contractor shall complete all work under this contract within the period of time specified in delivery orders to be issued except that no task orders shall be issued hereunder after the expiration of this contract.

#### 1.10 DESCRIPTION OF WORK ORDER

The Contracting Officer or his authorized representative will provide the Contractor with a description of the services to be provided for any work request. The Contractor shall respond to the need of the Government within 2 working days by visiting the work site in the company of the Contracting Officer or his authorized representative to examine conditions effecting construction time and to further clarify the scope of the work. Date for submittal of the Contractor's proposal for the construction time will be as agreed upon by the Government and the Contractor. Negotiations, if required, will be conducted to establish a completion date and resolve any questions on the schedule of items being ordered. The Task Order will then be issued by the Contracting Officer.

##### 1.10.1 COMMENCEMENT OF WORK

The Contractor shall commence any mobilization and familiarization activities prior to actual work on individual delivery orders. However, within 30 calendar days or less if mutually agreed upon, the Contractor shall be fully operational and working at the site on any required delivery orders. A Notice to Proceed will be issued against each individual delivery order and the Contractor shall be required to commence work required by a delivery order at the time specified on the task order, prosecute the work, and complete the entire work not later than the completion time specified on the task order. The time stated for completion shall include final cleanup of the premises.

##### 1.10.2 NOTICE OF COMPLETION OF TASK ORDER

The Contractor shall notify the Contracting Officer upon completion of each

individual task order. The Contractor shall give advance notice of the date the work will be fully completed and ready for final inspection. See CONTRACT CLAUSES clause "Inspection of Construction" for details on inspection and acceptance criteria

#### 1.11 INSTRUCTIONS FOR PAYMENT

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 Area Engineer.

##### 1.11.1 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.

#### 1.12 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. Physical conditions shall have been investigated by the Contractor for each task order to satisfy himself as to the condition of the site.

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)

#### 1.13 EXCEPTION TO COMPLETION TIME AND LIQUIDATED DAMAGES

In case the Contracting Officer determines that seeding, sodding, and/or planting and/or the specified maintenance thereof is not feasible during the construction period, such work will be excepted from the completion time and liquidated damages. This work shall be accomplished during the first seeding, sodding, and/or planting period and the specified maintenance period following the completion date.

#### 1.14 CONTRACT DRAWINGS AND SPECIFICATIONS

## 1.14.1 SETS FURNISHED

The contractor shall be responsible for making copies of specifications including amendments. The bid drawings as amended shall be utilized in the performance of the work until the Contractor has prepared contract drawings.

See paragraph below for contract drawing reproduction and distribution requirements. The work shall conform to the contract drawings, set out in the drawing index, all of which form a part of these specifications. The work shall also conform to the standard details bound or referenced herein.

## 1.14.2 DRAWING REPRODUCTION AND DISTRIBUTION

The Contractor shall reproduce multiple legible hard copy sets (half-size English unless directed otherwise) of contract drawings from Government provided CD-ROM containing read-only cal file drawings. Within 14 calendar days after receipt of CD-ROM containing read-only cal drawing files, the Contractor shall provide fifteen (15) legible hard copy drawing sets to: Mike Barnes, CENWO-PM-C, 106 South 15th Street, Omaha, NE 68102. The Government will process no progress payments prior to receipt of the legible contract drawings. After receipt and distribution of the legible hard copy drawing sets, the Government will provide the Contractor with a CD-ROM containing editable CAD file drawings (format defined in Section 01040 AS-BUILT DRAWINGS). The Contractor shall prepare as-built drawings (if required) as defined in Section 01040 AS-BUILT DRAWINGS, issued with each task order.

## 1.14.3 NOTIFICATION OF DISCREPANCIES

The Contractor shall check all CD-ROM drawing files furnished him immediately upon their receipt and shall promptly notify the Contracting Officer of any discrepancies. Dimensions marked on drawings shall be followed in lieu of scale measurements. Enlarged plans and details shall govern where the same work is shown at smaller scales. All scales shown are based on a standard drawing size 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.

## 1.14.4 OMISSIONS

Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

## 1.15 PAYMENT

## 1.15.1 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.

#### 1.15.2 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.

#### 1.15.3 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)

#### 1.16 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.

#### 1.17 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.

1.18 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 Contractor shall make such computations as are necessary to determine the quantities of work performed or finally in place, and provide such computations to the Contracting Officer for approval. 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)

1.19 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

Monthly days will be provided with each Task Order, based on site location.

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)

1.20 IOWA SALES AND USE TAX

a. In the event goods, wares or merchandise on which the Contractor has paid Iowa sales or use tax become an integral part of the project, the Contractor shall obtain appropriate forms from the Iowa State Tax Commission for recording the amount of purchases of such goods, wares, or merchandise, and shall complete, execute, and deliver them to the Contracting Officer prior to final settlement of the contract. The Contractor shall provide and report all data and information which may be necessary or required to enable the Contracting Officer to obtain all refunds from the Iowa Tax Commission to which the Federal Government may be entitled.

b. The Contractor shall insert a clause containing the substance of the foregoing paragraph a. in every first tier subcontractor or vendor to include such a clause in any subcontract or purchase order which he places. The Contractor shall obtain completed forms from his subcontractor and suppliers for submission to the Contracting Officer before final settlement of the contract.

1.21 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)

1.22 SECURITY REQUIREMENTS

1.22.1 Contractor's Employee Identification

The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed

identification shall immediately be delivered to the Contracting Officer, for cancellation upon release of any employees. When the contract involves work in restricted security areas, only employees who are U.S. citizens will be permitted to enter. Proof of U.S. citizenship is required prior to entry. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project. (Based on FAR 52.204-2)

#### 1.23 CONTRACTOR QUALITY CONTROL (CQC)

See Section 01451A Contractor Quality Control.

#### 1.24 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".

#### 1.25 DAILY WORK SCHEDULES AND WEEKLY COORDINATION MEETINGS

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 information that is needed in the minutes of the meeting. Required temporary utility services, time and duration of interruptions, and protection of adjoining areas shall be included with the Contractor's proposed 2-week work schedule. At this meeting, the Contractor shall also submit his schedule of proposed dates and times of all preparatory inspections to be performed during the next 2 weeks. Coordination action by the Contracting Officer relative to these schedules will be accomplished during these weekly meetings. Daily reports shall be completed and given to the Contracting Officer or Representative within 24 hours of work

#### 1.26 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," Regions IV & V. 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)

1.27 AS-BUILT DRAWINGS

As-Built drawings will be required on a task order by task order basis, some task orders will not be required as-built drawings.

1.28 PERFORMANCE OF WORK BY CONTRACTOR (APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least twenty (20) percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government. (FAR 52.236-1)

1.29 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   |          |       |

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b. Based on the circumstances of each procurement action, each of the above factors shall be weighted from .03 to .12 as indicated below. The value shall be obtained by multiplying the rate by the weight. The value column when totaled indicates the fair and reasonable profit percentage

under the circumstances of the particular procurement.

(1) Degree of Risk. Where the work involves no risk or the degree of risk is very small, the weighting should be .03; as the degree of risk increases, the weighting should be increased up to a maximum of .12. Lump sum items will have, generally, a higher weighted value than the unit price items for which quantities are provided. Other things to consider: the portion of the work to be done by subcontractors, nature of work, where work is to be performed, reasonableness of negotiated costs, amount of labor included in costs, and whether the negotiation is before or after performance of work.

(2) Relative Difficulty of Work. If the work is most difficult and complex, the weighting should be .12 and should be proportionately reduced to .03 on the simplest of jobs. This factor is tied in to some extent with the degree of risk. Some things to consider: the nature of the work, by whom it is to be done, where, and what is the time schedule.

(3) Size of Job. All work not in excess of \$100,000 shall be weighted at .12. Work estimated between \$100,000 and \$5,000,000 shall be proportionately weighted from .12 to .05.

(4) Periods of Performance. Jobs in excess of 24 months are to be weighted at .12. Jobs of lesser duration are to be proportionately weighted to a minimum of .03 for jobs not to exceed 30 days. No weight where additional time not required.

(5) Contractor's Investment. To be weighted from .03 to .12 on the basis of below average, average, and above average. Things to consider: amount of subcontracting, mobilization payment item, Government furnished property, equipment and facilities, and expediting assistance.

(6) Assistance by Government. To be weighted from .12 to .03 on the basis of average to above average. Things to consider: use of Government-owned property, equipment and facilities, and expediting assistance.

(7) Subcontracting. To be weighted inversely proportional to the amount of subcontracting. Where 80 percent or more of the work is to be subcontracted, the weighting is to be .03 and such weighting proportionately increased to .12 where all the work is performed by the Contractor's own forces.

### 1.30 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.

### 1.31 WAGE RATE APPLICATION

Wage rates will be furnished with each Task Order.1.32 (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<br>for Each Trade<br>***** | Goals for Female Participation<br>for Each Trade<br>***** |
|---|---|

|   |     |
|---|-----|
| To be furnished<br>with each Task Order | 6.9 |
|---|-----|

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs Office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the -

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is to be furnished with each task order.

1.33 (EFARS 52.232-5001) CONTINUING CONTRACTS (MAR 1995)

a. This is a continuing contract, as authorized by Section 10 of the River and Harbor Act of September 22, 1922 (33 U.S. Code 621). The payment of some portion of the contract price is dependent upon reservations of funds from future appropriations, and from future contributions to the project having one or more non-federal project sponsors. The responsibilities of the Government are limited by this clause notwithstanding any contrary provision of the "Payments to Contractor" clause or any other clause of this contract.

b. The sum reserved for each task order will be issued with each task order, if applicable, and will be available for payments to the Contractor during the current fiscal year. It is expected that Congress will make appropriations for future fiscal years from which additional funds together with funds provided by one or more non-federal project sponsors will be reserved for this contract.

c. Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not entitle the Contractor to a price adjustment under the terms of this contract except as specifically provided in certain paragraphs below. No such failure shall constitute a breach of this contract, except that this provision shall not bar a breach-of-contract action if an amount finally determined to be due as a termination allowance remains unpaid for one year due solely to a failure to reserve sufficient additional funds therefore.

d. The Government may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. The Contracting Officer will promptly notify the Contractor of any additional funds reserved for the contract by issuing an administrative modification to the contract.

e. If earnings will be such that funds reserved for the contract will be exhausted before the end of any fiscal year, the Contractor shall give written notice to the Contracting Officer of the estimated date of exhaustion and the amount of additional funds which will be needed to meet payments due or to become due under the contract during that fiscal year. This notice shall be given not less than 45 nor more than 60 days prior to the estimated date of exhaustion.

f. No payments will be made after exhaustion of funds except to the extent that additional funds are reserved for the contract. The Contractor shall be entitled to simple interest on any payment that the Contracting Officer determines was actually earned under the terms of the contract and would have been made except for exhaustion of funds. Interest shall be computed from the time such payment would otherwise have been made until actually or constructively made, and shall be at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, as in effect on the first day of the delay in such payment.

g. Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not constitute a breach of this contract and shall not entitle the Contractor to any price adjustment under the "Suspension of Work" clause or in any other manner under this contract.

h. An equitable adjustment in performance time shall be made for any increase in the time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds.

i. If, upon the expiration of sixty (60) days after the beginning of the fiscal year following an exhaustion of funds, the Government has failed to reserve sufficient additional funds to cover payments otherwise due, the Contractor, by written notice delivered to the Contracting Officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. Such a termination shall be considered a termination for the convenience of the Government.

j. If at any time it becomes apparent that the funds reserved for any fiscal year are in excess of the funds required to meet all payments due or to become due the Contractor because of work performed and to be performed under the contract during the fiscal year, the Government reserves the right, after notice to the Contractor, to reduce said reservation by the amount of such excess.

1.34 (DFAR 252.236-7002) OBSTRUCTION OF NAVIGABLE WATERWAYS (DEC 1991)

The Contractor shall promptly recover and remove any material, plant, machinery, or appliance which the contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation. The Contractor shall give immediate notice, with description and locations of any such obstruction, to the Contracting Officer; and when required by the Contracting Officer, mark or buoy such obstructions until the same are removed. The Contracting Officer may remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with this paragraph and deduct the cost of removal from any monies due or to become due to the Contractor; or the Contracting Officer may recover the cost of removal under the Contractor's bond. The Contractor's liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in Sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 et.seq.).

1.35 SIGNAL LIGHTS

The Contractor shall display signal lights and conduct his operations in accordance with the General Regulations of the Department of the Army and of the Coast Guard governing lights and day signals to be displayed by towing vessels with tows on which no signals can be displayed, vessels working on wrecks, dredges, and vessels engaged in laying cables or pipe or in submarine or bank protection operations, lights to be displayed on dredge pipe lines, and day signals to be displayed by vessels of more than 65 feet in length moored or anchored in a fairway or channel, and the passing by other vessels of floating plant working in navigable channels, as set forth in Commandant U.S. Coast Guard Instruction M1672.2, Navigation Rules: International-Inland (COMDTINST M16672.2), or 33 CFR81 Appendix A (International) and 33 CFR 84 through 33 CFR 89 (Inland) as applicable.

1.36 (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.

1.37 FEDERAL HOLIDAYS

The following Federal legal holidays are observed by this installation:

|                               |                             |
|-------------------------------|-----------------------------|
| New Year's Day                | 1 January                   |
| Martin Luther King's Birthday | Third Monday in January     |
| President's Day               | Third Monday in February    |
| Memorial Day                  | Last Monday in May          |
| Independence Day              | 4 July                      |
| Labor Day                     | First Monday in September   |
| Columbus Day                  | Second Monday in October    |
| Veterans Day                  | 11 November                 |
| Thanksgiving Day              | Fourth Thursday in November |
| Christmas Day                 | 25 December                 |

If a wage determination applies the number of holidays specified on it, it has priority over this clause.

1.38 OMBUDSMAN

For competitive Indefinite Delivery Indefinite Quantity (IDIQ), Small Construction Project Indefinite Delivery Type (SCPIDT) and Multiple Award Task Order (MATO) contracts, the designated ombudsman is LTC (P) Albert J. Castaldo, unless directed otherwise. The ombudsman will review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract.

PART 2 NOT USED

PART 3 NOT USED

-- End of Section --

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## SECTION 01200

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**5/00; Rev 02/02**

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## PART 2 NOT USED

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-- End of Section Table of Contents --

## SECTION 01200

CONSTRUCTION GENERAL  
5/00; Rev 02/02

## 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 Protection of Appurtenances from Bituminous Material Applications

It shall be the responsibility of the Contractor to cover and protect the surfaces of roadway appurtenances, structures and installations by approved methods in advance of any bituminous material application adjacent thereto.

Damages or defacement thereof shall be corrected as directed, by and at the expense of the Contractor.

### 1.3.2 Interruption of Electric Power

If it is necessary to cut off power in transmission lines that pass through construction areas, it shall be the Contractor's responsibility to make the necessary arrangements with the owner of the powerline, and the Contractor shall pay all costs therefor.

### 1.3.3 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 incompletd 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.

### 1.6.2 Haul Roads

The Contractor shall construct haul roads as may be necessary for the conduct of the work without additional cost to the Government. The Contractor shall arrange his hauling operations so as to cause a minimum interference with traffic and shall furnish flagmen and other facilities as required to avoid additional hazards to the public. Lines, grades and widths for haul roads, shall be selected to fulfill the requirements for safe and efficient hauling operations and shall be approved by the Contracting Officer prior to construction. Haul roads shall have ample width to provide safety. Preference shall be given to one-way haul roads when these are feasible. All roads shall be maintained in first class condition during all periods of their use. Roads shall be sprinkled whenever, in the opinion of the Contracting Officer, control of dust is necessary to insure safe movements of construction traffic. Upon completion of work under this contract, roads shall be disposed of as directed by the Contracting Officer. All signs, culverts, guards, fences and other improvements on roads constructed for the Contractor's convenience and operations shall be removed from the project site and shall remain his property. Use and repair of existing roads and bridges shall be subject to the requirements of local authorities. Prior to start of hauling operations on public roads, the Contractor shall furnish written evidence to the Contracting Officer that an agreement has been consummated with State and County officials on the use of public roads and bridges. Such agreements shall clearly relieve the Government of any responsibility for damage resulting from hauling across or on these roads.

#### 1.6.3 Joint Use of Transportation Facilities

The Contractor may use jointly with contractors and others, existing access and haul roads constructed by the Government or by others. Unless otherwise specifically authorized in writing, the Contractor will not be granted exclusive use of any access or haul road whether it be an existing road or one constructed by the Contractor. However, the use by others of roads constructed by or assigned to the Contractor primarily for his own use will be limited by the Contracting Officer to the minimum considered consistent with efficient prosecution of the work under this and other contracts in force. Maintenance of jointly used facilities shall be shared in proportion to use. In the event of a disagreement between this Contractor and others as to the use of any road, the decision of the Contracting Officer shall be final. The Contractor shall not obstruct any existing road on the land controlled by the Government.

#### 1.6.4 Waterway Crossings

The Contractor shall construct approved crossings where hauling is to be done across waterways with adequate openings for drainage and streamflow. Structures for crossings shall be safe for all operating equipment and vehicles and shall be adequate for drainage and flow of the waterway. After haul for construction has ceased, the structures constructed by the Contractor shall be removed and disposed of as directed.

#### 1.6.5 Ramps

Ramps shall be provided and maintained for access of hauling equipment into excavation and waste areas. Locations, grades and width are subject to review and approval by the Contracting Officer prior to construction.

#### 1.6.6 Drainage

The Contractor shall provide and maintain ditches, dikes and other

facilities within and adjacent to the work areas to direct the surface and subsurface flow of water away from abutting private property and work in place or under construction by this and other contracts. The design, location, type and size of drainage facilities are subject to review and approval by the Contracting Officer prior to construction.

## 1.7 PUBLIC ROADS

### 1.7.1 Traffic Control

The Contractor shall be responsible for the safe control of traffic on all haul and access roads used primarily for the work under these specifications and at their crossings with roads used by others. The Contractor shall, at his own expense, furnish all personnel, signal devices and signal necessary for the safe and efficient control of construction traffic on road systems used by the Contractor. A plan for traffic control, including a listing of equipment and its employment, shall be submitted for review and approval prior to construction.

### 1.7.2 Operations

When operations are being conducted near a U. S. or State Highway or when construction equipment is being used on or adjacent to such highway, the Contractor shall furnish signalmen and such warning signs as are necessary to provide adequate warning to the traveling public. The highways and streets shall be kept open at all times.

### 1.7.3 Barricades

At each location designated by the Contracting Officer and where safe operation requires the closing of roads, streets or other travel arteries leading to the work under this contract, the Contractor shall maintain a heavy plank barricade or other effective barrier during construction. Arrangements for closure of roads, streets or other travel arteries shall be made by the Contractor with local State, County or City officials. The Contractor shall notify the appropriate official in writing at least ten (10) days in advance of the date he desires to close a road to traffic and shall furnish a copy of the agreement to the Contracting Officer prior to closure. A satisfactory sign shall be placed on each barricade stating that the artery is closed. The cost of barricades shall be at the expense of the Contractor.

### 1.7.4 State and Federal Highways

Where the Contractor hauls across or on State or Federal highways, he shall enter into all agreements with the State Highway Commission and shall comply with any restrictions they may impose relative to load limits, care of traffic and cleanup. Such agreements shall clearly relieve the Government of any responsibility for damages resulting from hauling across or on State highways. Copies of such agreements shall be furnished to the Contracting Officer before the Contractor begins hauling on these highways.

### 1.7.5 State and Local Public Roads

#### (a) Load Limits:

The Highway Commission and local County Road Commissions restrict the load weights of haul vehicles using highways and county roads during the spring thaw period. The load restrictions are usually imposed from 1 April

through June depending on actual weather conditions.

(b) Hauling Regulations:

Prior to start of hauling operations on public roads, the Contractor shall furnish evidence to the Contracting Officer that an agreement has been consummated with State and County officials on the use of public roads and bridges. Such agreements shall clearly relieve the Government of any responsibility for damage resulting from hauling across or on these roads.

1.7.6 City Streets

Where the Contractor intends to cross or to use city streets for haul roads he shall enter into an agreement with the City and shall comply with any restrictions the City may impose relative to load limits, care of traffic and cleanup. Such agreements shall clearly relieve the Government of any responsibility for damage resulting from hauling across or on these highways. A copy of all such agreements shall be furnished the Contracting Officer before the Contractor begins hauling in city streets.

1.7.7 Utility Lines

It shall be the responsibility and obligation of the Contractor to make all arrangements with the affected companies for the necessary moving and alterations of utility lines and the continuation of service during construction as covered by the plans and specifications.

1.7.8 Railroad Crossings

Temporary access and haul road grade crossings over railroad tracks, as requested by the Contractor, shall be constructed and removed by the railroad forces at the expense of the Contractor. Grade crossings constructed for the Contractor by the owner railroad and temporary grade crossings shall be covered by insurance in the amounts specified in Section 00800 SPECIAL CONTRACT REQUIREMENTS, paragraph: Insurance on Railway Right-of-Way.

1.8 COOPERATION WITH OTHERS

The Contractor shall cooperate and coordinate his work with that of others as required for orderly completion of all work. In the event of disagreement between the Contractor and others, the decision of the Contracting Officer shall be final.

1.9 WORK BY OTHERS

Public and private authorities may be working in the area during the life of this contract. The Contractor shall coordinate his work with others to avoid undue interference, and shall conduct his operations, other than required access, within the limits of the assigned construction area or construction right-of-way limits. Specifications and drawings showing work under other contracts are available for examination at the Corps of Engineers District Office, 215 North 17th Street, Omaha, Nebraska 68102-4978, or at the Office of the Area Engineer , .

1.10 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

Right-of-Way Agreements

State and Federal Highways

Agreements for hauling on highways

State and Local Public Roads

Agreements for hauling on roads

SD-02 Shop Drawings

Care of Water; G-AO

Traffic Control; G-AO

SD-11 Closeout Submittals

Warranty of Construction

List of warranties with copy of each

1.11 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.

1.12 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)

### 1.13 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. To prevent overturning by high winds, all portable toilets shall be anchored down.

### PART 2 NOT USED

PART 3 NOT USED

-- End of Section --

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SECTION 01330

SUBMITTAL PROCEDURES

**09/01; Omaha Update 08/03**

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## SECTION 01330

SUBMITTAL PROCEDURES  
09/01; Omaha Update 08/03

## 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 01355A 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. 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 Government 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 FINAL COPY OF 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.

|  |
|--|
| <p>CONTRACTOR</p> <p>(Firm Name)</p> <p>_____ Approved</p> <p>_____ Approved with corrections as noted on submittal data and/or attached sheets(s).</p> <p>SIGNATURE: _____</p> <p>TITLE: _____</p> <p>DATE: _____</p> |
|--|

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<br>IDIQ Missouri River Mitigation |                |           |  |           |                     | CONTRACTOR                 |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|--|----------------|-----------|--|-----------|---------------------|----------------------------|--------------------|--------------------|-------------------|----------------|------------------------|----------------------------|----------------------------|-------------|----------------|---------|------------------|
| ACTIVITY NO  | TRANSMITTAL NO | SPEC SECT | DESCRIPTION<br>ITEM SUBMITTED          | PARAGRAPH | GOVT CLASSIFICATION | CONTRACTOR: SCHEDULE DATES |                    |                    | CONTRACTOR ACTION |                | APPROVING AUTHORITY    |                            |                            |             |                | REMARKS |                  |
|  |                |           |  |           |                     | SUBMIT                     | APPROVAL NEEDED BY | MATERIAL NEEDED BY | ACTION CODE       | DATE OF ACTION | DATE FWD TO APPR AUTH/ | DATE FWD TO OTHER REVIEWER | DATE RCD FROM OTH REVIEWER | ACTION CODE | DATE OF ACTION |         | MAILED TO CONTR/ |
| (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                        | 1.11      | G AO                |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | Construction Right-of-Way              |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | State and Federal Highways             | 1.7.4     |                     |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | State and Local Public Roads           | 1.7.5     |                     |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | SD-02 Shop Drawings                    |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | Care of Water                          | 1.4       | G AO                |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | Traffic Control                        | 1.7.1     | G AO                |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | SD-11 Closeout Submittals              |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | Warranty of Construction               |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                | 01400     | SD-07 Certificates                     |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | Qualifications                         |           | G AO                |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                | 02000     | SD-03 Product Data                     |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | Location of Material Sources for Stone | 3.1       | G AO                |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | SD-04 Samples                          |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | Samples of Stone                       | 3.1.1     | G AO                |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | SD-05 Design Data                      |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | Letter of Clearance                    | 3.1       | G AO                |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | SD-06 Test Reports                     |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | Tests, service records, and results    | 3.4       | G AO                |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | Tests, service records, and results    | 3.4       | G AO                |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                | 02110     | SD-11 Closeout Submittals              |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |
|  |                |           | Materials other than salable timber    | 3.3.2     |                     |                            |                    |                    |                   |                |                        |                            |                            |             |                |         |                  |

# SUBMITTAL REGISTER

CONTRACT NO.

TITLE AND LOCATION

IDIQ Missouri River Mitigation

CONTRACTOR

| ACTIVITY NO | TRANSMITTAL NO | SPEC SECT | DESCRIPTION<br>ITEM SUBMITTED                      | PARAGRAPH | GOVT CLASSIFICATION | CONTRACTOR: SCHEDULE DATES |                    |                    | CONTRACTOR ACTION |                | APPROVING AUTHORITY    |                            |                            |             | REMARKS |                |                  |
|-------------|----------------|-----------|--|-----------|---------------------|----------------------------|--------------------|--------------------|-------------------|----------------|------------------------|----------------------------|----------------------------|-------------|---------|----------------|------------------|
|             |                |           |  |           |                     | SUBMIT                     | APPROVAL NEEDED BY | MATERIAL NEEDED BY | ACTION CODE       | DATE OF ACTION | DATE FWD TO APPR AUTH/ | DATE FWD TO OTHER REVIEWER | DATE RCD FROM OTH REVIEWER | ACTION CODE |         | DATE OF ACTION | MAILED TO CONTR/ |
| (a)         | (b)            | (c)       | (d)  | (e)       | (f)                 | (g)                        | (h)                | (i)                | (j)               | (k)            | (l)                    | (m)                        | (n)                        | (o)         | (p)     | (q)            | (r)              |
|             |                | 02220     | SD-03 Product Data<br>Work Plan                    |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | SD-07 Certificates                                 |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | Demolition plan                                    | 1.7       |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | Notifications                                      | 1.4.1     |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | Notification of Demolition and<br>Renovation forms |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                | 02935     | SD-01 Preconstruction Submittals                   |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | Delivery   | 1.2.1     |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | SD-03 Product Data                                 |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | Erosion Control Material                           | 2.1.7     |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | Equipment  | 3.3.2     |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | SD-07 Certificates                                 |           |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | Application of Pesticide                           | 3.5       |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | Maintenance Report                                 | 3.8.2.4   |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | Turf Establishment Period                          | 3.8       |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | Seed   | 2.1.1     | G AO                |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | Fertilizer   | 2.1.2.1   |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |
|             |                |           | Pesticide  | 2.1.6     |                     |                            |                    |                    |                   |                |                        |                            |                            |             |         |                |                  |

|   |      |                 |
|---|------|-----------------|
| <b>TRANSMITTAL OF SHOP DRAWINGS, EQUIPMENT DATA, MATERIAL SAMPLES<br/>OR MANUFACTURE'S CERTIFICATES OF COMPLIANCE</b> | DATE | TRANSMITTAL NO. |
|---|------|-----------------|

**SECTION I - REQUEST FOR APPROVAL OF THE FOLLOWING ITEMS** (This section to be initiated by the Contractor)

|                           |                            |              |   |
|---------------------------|----------------------------|--------------|---|
| TO:                       | FROM:                      | CONTRACT NO. | CHECK ONE:<br><input type="checkbox"/> THIS IS A NEW TRANSMITTAL<br><input type="checkbox"/> THIS IS A RE-SUBMITTAL OF<br>TRANSMITTAL NO. _____ |
| SPECIFICATION SECTION NO. | PROJECT TITLE AND LOCATION |              | CHECK ONE:<br><input type="checkbox"/> FIO<br>G-RE <input type="checkbox"/> G-ED<br>G-AE  |

| ITEM NO. | DESCRIPTION OF ITEM SUBMITTED<br><i>(Type, size, model, etc.)</i> | MFG. OR CONTR. CAT., CURVE DRAWING OR BROCHURE NO. | NO of COPIES | CONTRACT REFERENCE DOCUMENT |            | FOR CONTRACTOR USE CODE | VARIATION (SEE #6) | FOR CE USE CODE |
|----------|---|--|--------------|-----------------------------|------------|-------------------------|--------------------|-----------------|
|          |   |  |              | SPEC. PARA.                 | DWG. SHEET |                         |                    |                 |
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| REMARKS: | <p>I certify that the above submittal items have been reviewed in detail and are correct and in strict compliance with the contract drawings and specifications except as otherwise stated.</p> <p>_____<br/>NAME, PHONE NUMBER, AND SIGNATURE OF CONTRACTOR QC</p> |
|----------|---|

**SECTION II - APPROVAL ACTION**

|   |   |      |
|---|---|------|
| ENCLOSURES RETURNED <i>(List by Item No.)</i> | NAME, TITLE, AND SIGNATURE OF APPROVING AUTHORITY | DATE |
|   |   |      |

## INSTRUCTIONS

1. Section I will be initiated by the Contractor in the required number of copies.
2. Each new transmittal shall be numbered consecutively for each specification section in the space provided in "Transmittal No.". This number, in addition to the contract 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. The "Item No." will be the same "Item No." as indicated on ENG FORM 4288-R for each entry on this form.
4. Submittals requiring expeditious handling will be submitted on a separate form.
5. Separate transmittal form will be used for submittals under separate sections of the specifications.
6. A check shall be placed in the "Variation" column when a submittal is not in accordance with the plans and specifications--also, a written statement to that effect shall be included in the space provided for "Remarks".
7. Form is self-transmittal, letter of transmittal is not required.
8. When a sample of material or Manufacturer's Certificate of Compliance is transmitted, indicate "Sample" or "Certificate" in column c, Section I.
9. U.S. Army Corps of Engineers approving authority will assign action codes as indicated below in space provided in Section I, column i to each item submitted. In addition they will ensure enclosures are indicated and attached to the form prior to return to the contractor. The Contractor will assign action codes as indicated below in Section I, column g, to each item submitted.

### THE FOLLOWING ACTION CODES ARE GIVEN TO ITEMS SUBMITTED

- |   |   |
|---|---|
| A -- Approved as submitted.   | E -- Disapproved (See attached).  |
| B -- Approved, except as noted on drawings.   | F -- Receipt acknowledged.  |
| C -- Approved, except as noted on drawings.<br>Refer to attached sheet resubmission required. | FX -- Receipt acknowledged, does not comply<br>as noted with contract requirements. |
| D -- Will be returned by separate correspondence.   | G -- Other (Specify)  |

10. Approval of items does not relieve the contractor from complying with all the requirements of the contract plans and specifications.

(Reverse of CENWO-CD-Q SUBMITTAL FORM, IFB-1 (Omaha Version of ENG Form 4025-R))

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SPECIAL SAFETY REQUIREMENTS

05/00 Rev 06/03

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## SECTION 01400

SPECIAL SAFETY REQUIREMENTS  
05/00 Rev 06/03

## 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](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 01330 SUBMITTAL PROCEDURES:

Administrative Submittals

## Accident Prevention Plan;

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)

-- End of Section --

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**1/03; Omaha Revision 8/03**

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## SECTION 01451A

CONTRACTOR QUALITY CONTROL  
1/03; Omaha Revision 8/03

## 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 design-construction and 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. The site project superintendent is subject to removal by the Contracting Officer for non-compliance with either the established quality control system or quality requirements specified in this contract. 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.

### 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 Manager or someone higher in the Contractor's organization. Project Manager in this context shall mean the individual with responsibility for the overall management of the project, including quality and production.
- b. The name, qualifications (in resume format), duties, responsibilities, and authorities of each person assigned a CQC function.
- c. A copy of the letter to the CQC System Manager signed by an authorized official of the firm which describes the responsibilities and delegates sufficient authorities to adequately perform the functions of the CQC System Manager, including authority to stop work which is not in compliance with the contract. 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. 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, shop 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 Additional Requirement

In addition to the above experience and education requirements the CQC System Manager shall have completed the course entitled "Construction Quality Management For Contractors". This course is periodically offered at each of the four area offices in the Omaha District according to the following revolving training schedule:.

|                         |                |                          |
|-------------------------|----------------|--------------------------|
| <u>Badger Area</u>      | First Session  | Between 15 & 25 April    |
|                         | Second Session | Between 15 & 25 October  |
| Point of Contact        | Roy Brewer     | (319) 753-1386           |
| <u>Black Hills Area</u> | First Session  | Between 1 & 10 March     |
|                         | Second Session | Between 1 & 10 September |

|                        |                |                         |
|------------------------|----------------|-------------------------|
| Point of Contact       | Dwight Pochant | (605) 923-2983          |
| <u>Fort Crook Area</u> | First Session  | Between 15 & 25 January |
|                        | Second Session | Between 15 & 25 July    |
| Point of Contact       | Al Kreisler    | (402) 293-2540          |
| <u>Rocky Mountain</u>  | First Session  | Between 1 & 10 June     |
|                        | Second Session | Between 1 & 10 December |
| Point of Contact       | Paul Jendzejec | (719) 556-4184          |

The exact date and location for the sessions will be determined approximately 30 days in advance of the training. The cost of training is presently established at \$50 to be paid by each student in advance of the training. For information about a particular session, the best source is the point of contact listed above.

#### 3.4.5 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 CONTRACT REQUIREMENTS 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. Include information identified by the "Responsible Individual(s)" for Safety as outlined in SECTION 01400, SPECIAL SAFETY REQUIREMENTS.
- 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.





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 01500  
MEASUREMENT AND PAYMENT  
**01/00**

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PART 2 PRODUCTS

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2.1.1 Work Included

2.1.2 Measurement (Ton)

2.1.3 Payment

2.2 ALL REMAINING WORK

2.2.1 Work Included

2.2.2 Measurement

2.2.3 Payment

PART 3 EXECUTION (NOT USED)

-- End of Section Table of Contents --

## SECTION 01500

MEASUREMENT AND PAYMENT  
01/00

## PART 1 GENERAL (NOT USED)

The following apply to task orders with bidforms containing "Stone" and/or "All Remaining Work".

## PART 2 PRODUCTS

## 2.1 STONE

## 2.1.1 Work Included

The work includes all material, equipment and labor of furnishing, hauling, handling and placing of quarried stone as specified herein and shown on the drawings.

## 2.1.2 Measurement (Ton)

a. Stone shall be weighed for final payment immediately prior to placement by one of the following methods at the option of the Contractor and with approval of the Contracting Officer. The materials shall be weighed to the nearest 20 pounds and the net weight reduced to the nearest hundredth of a ton.

b. Stone delivered at the site of the work may be weighed on public scales which have been approved by the Contracting Officer and which have been certified by the State wherein the scales are located. If public scales are not available, the weighing service may be supplied by an independent professional organization approved by the Contracting Officer. The Contractor shall furnish the Contracting Officer a copy of each printed weigh bill, when self-printing scales are used, or a copy of the weigh bill signed by the weigh master as each load is delivered to the jobsite. (Each weigh bill shall contain the following: date, unit number, time, tare weight, gross weight, net weight, name of project, contract number, name of Contractor, and signature of weigher.) All costs for weighing the materials shall be borne by the Contractor.

## 2.1.3 Payment

Applicable unit price times the number of tons of stone placed.

## 2.2 ALL REMAINING WORK

## 2.2.1 Work Included

The work of this item shall include but not be limited to labor and equipment needed for clearing and grubbing, rock, pile and dike removal and all remaining work not listed above for the completion of the project.

2.2.2 Measurement

Lump Sum

2.2.3 Payment

Payment for this item shall be the lump sum, made on a progressive basis, based on the percentage of work completed.

PART 3 EXECUTION (NOT USED)

-- End of Section --

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DIVISION 02 - SITE WORK

SECTION 02000

STONE

**01/00**

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- 1.1 REFERENCES
- 1.2 SUBMITTALS
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- 1.4 PAYMENT

PART 2 PRODUCTS (NOT APPLICABLE)

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- 3.1 STONE
  - 3.1.1 GENERAL
    - 3.1.1.1 Broken Concrete
- 3.2 Stone for the Chevron Structures
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- 3.3 NOT USED
- 3.4 Tests, Service Records, and Results
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  - 3.4.3 Soundness in Freezing and Thawing-Method for Riprap Rock
  - 3.4.4 Gradation Field Tests

-- End of Section Table of Contents --

## SECTION 02000

STONE  
01/00

## 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 88  | (1990) Soundness of Aggregates by Use of Sodium Sulfate or Magnesium Sulfate |
| ASTM C 127 | (1988) Specific Gravity and Absorption of Coarse Aggregate                   |

## UNITED STATES ARMY CORPS OF ENGINEERS (COE)

|           |  |
|-----------|--|
| CRD-C 144 | (1992) Standard Test Method for Resistance of Rock to Freezing and Thawing |
|-----------|--|

## 1.2 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals having no designation are for information only. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

## SD-03 Product Data

Location of Material Sources for Stone; G-AO.

## SD-04 Samples

Samples of Stone; G-AO.

## SD-05 Design Data

Letter of Clearance; G-AO.

## SD-06 Test Reports

Tests, service records, and results; G-AO.

## 1.3 MEASUREMENT OF MATERIALS

Material shall be measured as specified in SECTION 01500 MEASUREMENT AND PAYMENT.

1.4 PAYMENT

Separate payment will not be made for the work described in this section. All costs for this work will be included in the appropriate contract unit bid prices.

PART 2 PRODUCTS (NOT APPLICABLE)

PART 3 EXECUTION

3.1 STONE

The Contractor shall submit the location of material sources for stone in accordance with SECTION 01200 CONSTRUCTION GENERAL. The locations shall be described to the quarter-quarter section and shall be clearly delineated on a map with a scale of 1 inch = 2000 feet. The map shall also indicate roads and distances to the nearest cities or towns, which would appear on typical highway maps. The Contractor shall also submit a letter of clearance from the State Historic Preservation Officer permitting the quarrying, excavation, or other removal of the required contract materials. Address of the State Officer is as follows:

NEBRASKA

DR. JAMES A. HANSEN  
NEBRASKA STATE HISTORICAL SOCIETY  
1500 R. STREET, P.O. BOX 82554  
LINCOLN, NE 68503

IOWA

DAVID CROSSUN, SHPO  
IOWA STATE HISTORICAL SOCIETY  
EAST 12th AND GRAND AVENUE  
DES MOINES, IA 50319

SOUTH DAKOTA

DR. JUNIUS B. FISHBURNE  
OFFICE OF CULTURAL PRESERVATION  
KNEIP BUILDING  
PIERRE, SD 57501

MISSOURI

RON KUCHERA, ACTING DIRECTOR  
MISSOURI DEPT. OF NATURAL RES.  
P.O. BOX 176  
JEFFERSON CITY, MO 65102

NORTH DAKOTA

ALIOS B. SPIELMAN  
STATE HISTORICAL SOCIETY  
OF NORTH DAKOTA  
HERITAGE CENTER  
BISMARCK, ND 58505

MONTANA

MARCELLA SHERFY, SHPO  
MONTANA HISTORICAL SOCIETY  
225 NORTH ROBERTS  
HELENA, MONTANA 59601

COLORADO

BARBARA SUDLER  
COLORADO HERITAGE CENTER  
1300 BROADWAY  
DENVER, CO 80203

WYOMING

ALVIN F. BOSTION  
STATE HISTORICAL SOCIETY  
WYOMING RECREATION COMMISSION  
122 WEST 25th HERSCHLER BLDG  
CHEYENNE, WY 82002

3.1.1 GENERAL

Whenever "stone" is specified in this contract, it shall be durable stone approved by the Contracting Officer and shall conform to all requirements of these specifications. The Contractor shall submit sample(s) of stone at

the location of the sources of materials in accordance with paragraph 3.1. and paragraph 3.4. Stone salvaged from any existing federally constructed erosion control or navigation project will not be approved as a source of material except where specified on the drawings. In addition to the sampling and test results or service test records required of the Contractor, the Contracting Officer reserves the right to inspect the material source and require additional samples of stone material, selected by the Contracting Officer, be submitted to the Contracting Officer for evaluation and approval prior to delivery of any material to the site of the work, except for test purposes. These samples, identified by specific location and specific geologic formation shall be obtained by the Contractor and delivered at his expense to a point designated by the Contracting Officer at least 10 days in advance of the time when the placing of the stone protection is expected to begin. The above inspection and sampling may be repeated any time the Contractor changes the location of geological formation from which the material is coming. The Contractor shall not be granted an extension of time or extra compensation due to any delay caused by sampling, testing, approval or disapproval of stone material under the requirements of these specifications.

3.1.1.1 Broken Concrete

Broken concrete rubble will not be allowed as an allowable substitute for stone.

3.2 Stone for the Chevron Structures

3.2.1 General

The stone shall consist of broken field boulders or quarried stone meeting the quality requirements above. Neither the breadth nor the thickness of any piece of stone shall be less than one-third of its length. Stone shall be reasonably well graded from coarse to fine. Quarry operation shall be controlled to produce a reasonable well graded stone of the required size, and the Contracting Officer may require changes as necessary to produce the required product. Dirt and fines of less than 1/2-inch maximum cross section, accumulated from interledge layers or from blasting or handling operations or breaking shall not exceed 5 percent by weight.

The stone shall be reasonably well graded between the following limits:

| Limits of Stone Weight<br>Percent Lighter<br>by Weight<br>% | Weight<br>in Pounds (lbs) |         | Size in Approx.<br>Spherical Diameter (in) |         |
|---|---------------------------|---------|--|---------|
|   | Maximum                   | Minimum | Maximum                                    | Minimum |
| 100   | 954                       | 393     | 27   | 20      |
| 50  | 252                       | 197     | 18   | 16      |
| 15  | 146                       | 62      | 14   | 11      |

3.3 NOT USED

3.4 Tests, Service Records, and Results

Tests, service records, and results will be used to determine the acceptability of the quarried stone protection materials. In the event test reports and a service record that are satisfactory to the Contracting Officer are not available, as in the case of newly operated sources, the

material shall be subject to such tests as are necessary to determine its acceptability for use in the work. Acceptance testing of field boulders for compliance with the quality requirements specified hereinafter will not be required. Tests to which the material may be subjected include petrographic analysis, specific gravity, absorption, wetting and drying, soundness in magnesium sulfate, freezing and thawing, and such other tests as may be considered necessary to demonstrate to the satisfaction of the Contracting Officer that the materials are acceptable for use in the work.

All sampling of the stone protection materials will be made by or under the supervision of the Contracting Officer. All tests shall be performed by the Contractor at no cost to the Government. The stone protection material shall meet the following test limits when tested as indicated.

#### 3.4.1 Bulk Specific Gravity

Saturated Surface-dry basis, ASTM C 127 - not less than 2.40. The tests method shall be modified as follows: Total sample shall weigh 5,000 grams  $\pm$  2 percent. Individual particles shall weigh approximately 300 grams each.

#### 3.4.2 Soundness

Soundness in Magnesium Sulfate, ASTM C 88, loss at 5 cycles not more than 12 percent. ASTM C 88 shall be modified as follows:

##### 3.4.2.1 General

The sample shall be prepared by breaking it into fragments reasonably uniform in size and shape and weighing approximately 100 grams each. The test sample shall weigh 5,000 grams  $\pm$  2 percent. The sample shall be thoroughly washed and dried previous to test as described for coarse aggregate. The samples immersed in the solution shall be maintained at a temperature of 80 degrees F  $\pm$  2 degrees F for the immersion period.

##### 3.4.2.2 Quantitative Examination

At the end of the fifth cycle, the percentage loss shall be determined by the three following methods. The test report shall show the loss computed by each method; however, only the combined loss shall be used for acceptance or rejection of the material.

###### a. Loss by Breaking

An individual piece which has broken or split into three or more fragments shall be considered to have failed the test, provided each of the three such fragments is at least 10 percent of the original piece by weight. The total original weight of all pieces failing the test, expressed as percentage of the total original weight of the sample, shall be considered as percentage loss by breaking.

###### b. Loss by Crumbling and Flaking

After the loss by breaking has been determined, the pieces that have not failed in that determination shall be screened on the 1/2-inch sieve and the material retained on the sieve shall be weighed for purposes required to determine combined losses. The pieces which have failed by breaking shall then be added to the material remaining on the 1/2-inch sieve and screened. The difference between the total original weight of the sample and the total weight of the material retained on the 1/2-inch sieve expressed as percentage of the total original

weight, shall be considered as percentage loss by crumbling and flaking.

c. Combined Loss

The difference between the total original weight of the material retained on the 1/2-inch sieve, after screening the pieces which did not fail by breaking, expressed as percentage of the total original weight, shall be considered as percentage combined loss.

d. Report

The report for riprap rock shall show the percentages of loss calculated as described herein before and the number of pieces affected, classified as to number disintegrating, splitting, crumbling, cracking, flaking, etc.

3.4.3 Soundness in Freezing and Thawing-Method for Riprap Rock

The test for freezing and thawing shall be in accordance with CRD-C 144, STANDARD TEST METHOD FOR RESISTANCE OF ROCK TO FREEZING AND THAWING. The test shall be conducted on a minimum of three (3) specimens, and the loss at twenty (20) cycles for each individual specimen shall not exceed twenty-five (25) percent. The test report submitted for approval shall contain information as required by CRD-C 144.

3.4.4 Gradation Field Tests

Tests to determine the amount of dirt and fines of less than 1/2-inch maximum cross section and to determine the gradation of the quarried and new stone material shall be performed by the Contractor, under the supervision of the Contracting Officer, by approved methods. A representative sample, consisting of not less than 12 tons, shall be tested at the start of construction operations and at intervals during construction, as directed. A total of three acceptable tests shall be required from each different source of stone material and for each specified gradation. These tests shall be performed at the construction site prior to placement of the stone. The test shall be conducted immediately upon request of the Contracting Officer. The Contractor shall plot the results of each test for gradation in relation to the gradation limits envelope specified. The plots shall be made on Engineering Form 4055, furnished by the Contracting Officer, or on a similar form. Results of the field test and the plots shall be furnished to the Contracting Officer prior to placement of the stone. If at any time the material fails to meet the requirements, the Contractor shall adjust his operations to control the amount of dirt and fines to meet the specifications.

-- End of Section --

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SECTION 02110

CLEARING AND GRUBBING

**02/00**

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PART 3 EXECUTION

- 3.1 CLEARING
  - 3.1.1 Trees
  - 3.1.2 Vegetation
  - 3.1.3 Disposal Areas
- 3.2 GRUBBING
- 3.3 DISPOSAL OF MATERIALS
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    - 3.3.2.2 Brush Piles

-- End of Section Table of Contents --

## SECTION 02110

CLEARING AND GRUBBING  
02/00

## PART 1 GENERAL

## 1.1 REFERENCES (NOT USED)

## 1.2 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals having no designation are for information only. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

## SD-11 Closeout Submittals

Materials other than salable timber; .

Written permission to dispose of such products on private property shall be filed with Contracting Officer.

## 1.3 MEASUREMENT OF MATERIALS (NOT USED)

## 1.4 PAYMENT (NOT USED)

## PART 2 PRODUCTS (NOT USED)

## PART 3 EXECUTION

## 3.1 CLEARING

In areas where grubbing is not required, Contractor clearing operations shall consist of complete removal of all obstructions aboveground surface. All trees, except as specified in subparagraph 3.1.1, all stumps, down timber, snags, vegetation, old piling, stone, abandoned structures, fencing, and similar debris shall be cleared within the limits of the structure foundations. The refuse shall be disposed of as specified in paragraph 3.3. All areas to be cleared shall be approved by the contracting officer prior to commencement of clearing operations.

## 3.1.1 Trees

Certain trees designated by the Contracting Officer within the construction right-of-way and disposal areas shall be left standing. Removal of any trees greater than 8 inches in diameter, measured at a point 4 feet above the ground, shall require the approval of the Contracting Officer. Trees shall be felled in such a manner as to avoid damage to trees left standing, to existing structures and installations, and those under construction, as well as with due regard to the safety of employees and others. Removal of trees within 100 feet of the Missouri River shall be kept to an absolute minimum. Bald Eagles may be roosting in the area. Any trees being used as roosts by Bald Eagles shall be left standing as specified in SECTION 01410 ENVIRONMENT PROTECTION.

### 3.1.2 Vegetation

Vegetation to be removed shall consist of all heavy growth of crops, grass, and weeds, within the clearing limits of the structures.

### 3.1.3 Disposal Areas

Except for trees designated to remain standing, disposal areas shall be cleared to the extent required for placing of waste material. Where removal of trees becomes necessary, they shall be cut off a minimum of 2 feet below the finish grade line.

## 3.2 GRUBBING

Grubbing shall consist of the removal of all stumps, roots, buried logs, old piling, and other objectionable matter. The areas within the limits of all structures shall be thoroughly grubbed. All tap roots, lateral roots, piling, or other projections over 1-1/2 inches in diameter shall be removed to a depth of 2 feet below the natural surface of the ground, or the base of the structures. All areas to be grubbed shall be approved by the contracting officer prior to commencement of grubbing operations.

## 3.3 DISPOSAL OF MATERIALS

### 3.3.1 Salable Timber

All felled timber from which saw logs, pulpwood, posts, poles, ties, mine props or cordwood can be produced shall be considered as salable timber and stockpiled at locations as shown on the drawings.

### 3.3.2 Materials Other Than Salable Timber

#### 3.3.2.1 Disposal of Debris

Disposal areas shall be located on the project right-of-way at sites selected by the Contractor subject to approval of the Contracting Officer. All logs, stumps, brush, vegetation, trash, piling, and other miscellaneous debris which are the products of the clearing and grubbing operations shall be placed as shown in the drawings. In lieu of placement in disposal areas, the Contractor, at his option, may remove any or all of the products of clearing and grubbing operations from the site and dispose of the material at other locations or through other sources arranged for, by, and at the expense of the Contractor, and approved by the Contracting Officer. The burning of debris on or off the site shall not be permitted. The disposal of material shall closely follow the clearing and grubbing process so that in the case of high water the cleared materials will not be washed downstream. No material shall be disposed of in the Missouri River, nor in wetland areas on-site or off-site. If the contractor opts to dispose of material off-site, he shall comply with all Federal, state and local laws and regulations, and provide copies of all permits to the Contracting Officer.

#### 3.3.2.2 Brush Piles

The contractor may dispose of large trees and large branches in brush piles within the project right-of-way. The location of each brush pile shall be approved by the Contracting Officer prior to placement of material. No brush piles shall be placed in wetland areas on-site or off-site.

-- End of Section --

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SECTION 02210

GRADING

01/00

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- 3.5 PREPARATION OF GROUND SURFACE FOR FILL
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## SECTION 02210

GRADING  
01/00

## 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 1556 | (1990) Density and Unit Weight of Soil in Place by the Sand-Cone Method                                    |
| ASTM D 698  | (1991; R 1998) Laboratory Compaction Characteristics of Soil Using Modified Effort (12,400 ft-lbf/cu. ft.) |
| ASTM D 2167 | (1994) Density and Unit Weight of Soil in Place by the Rubber Balloon Method                               |
| ASTM D 2487 | (1993) Classification of Soils for Engineering Purposes (Unified Soil Classification System)               |

## 1.2 DEFINITIONS

## 1.2.1 Satisfactory Materials

Materials classified in ASTM D 2487 as SP, SC, SM, CL, CH, ML, GM, GW, GP, and SW, and free from roots and other organic matter, trash, debris, and frozen materials and stones larger than 6 inches in any dimension are satisfactory.

## 1.2.2 Unsatisfactory Materials

Materials which do not comply with the requirements for satisfactory materials are unsatisfactory. Materials classified in ASTM D 2487 as MH, Pt, OH, and OL are unsatisfactory.

## 1.2.3 Cohesionless and Cohesive Materials

Cohesive materials include materials classified as GC, SC, ML, CL, MH, and CH. Cohesionless materials include materials classified in ASTM D 2487 as GW, GP, SW, and SP. Materials classified as GM and SM will be identified as cohesionless only when the fines have a plasticity index of zero.

## 1.2.4 Degree of Compaction

Degree of compaction is a percentage of the maximum density obtained by the test procedure presented in ASTM D 698 abbreviated below as a percent of

laboratory maximum density.

#### 1.2.5 Topsoil

Material obtained from offsite areas and/or excavations.

#### 1.2.6 Right-of-Way

The right-of-way for constructing the work and disposal areas will be furnished without cost to the Contractor, within the right-of-way as shown on the drawing. Other disposal areas outside the right-of-way may be selected by the Contractor subject to the approval of the Contracting Officer.

### 1.3 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals having no designation are for information only. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-09 Manufacturer's Field Reports

Field Testing Control .

Copies of all laboratory and field test reports to the Contracting Officer within 24 hours of the completion of the test.

### 1.4 MEASUREMENT OF MATERIALS

Material shall be measured as specified in SECTION 01500 MEASUREMENT AND PAYMENT.

### 1.5 PAYMENT

Separate payment will not be made for the work described in this section. All costs for this work will be included in the appropriate contract unit bid prices.

## PART 2 PRODUCTS

### 2.1 BORROW MATERIAL

#### 2.1.1 Selection

Borrow materials shall be obtained from sources within the limits of Government-controlled land, subject to approval. Borrow materials shall be subject to approval. Borrow material from approved sources on Government-controlled land may be obtained without payment of royalties. Unless specifically provided, no borrow shall be obtained within the limits of the project site without prior written approval.

## PART 3 EXECUTION

### 3.1 CONSERVATION OF TOPSOIL

Where indicated, topsoil shall be removed to a depth of 4 inches without contamination with subsoil and stockpiled convenient to areas for later application or at locations specified. Topsoil shall be removed to full depth and shall be stored separate from other excavated materials and piled

free of roots, stones, and other undesirable materials. Any surplus of topsoil from excavations and grading shall be removed from the site.

### 3.2 EXCAVATION

Excavation of every description, regardless of material encountered, within the grading limits of the project shall be performed to the lines and grades indicated. Satisfactory excavation material shall be transported to and placed in fill areas within the limits of the work. All unsatisfactory material and surplus material shall be disposed of at locations indicated on the plans. In the event that it is necessary to remove unsatisfactory material to a depth greater than specified, the Contracting Officer shall be notified. Excavations carried below the depths indicated, without specific directions, shall, except as otherwise specified, be refilled to the proper grade with satisfactory material as directed. All additional work of this nature shall be at the Contractor's expense. Excavation shall consist of any excavation incidental to placement of inlet, outlet, and grade control structures, structure modifications, and pilot channel. Materials that contain debris, roots, or organic material and are determined by the Contracting Officer as unsuitable for providing a stable foundation for structures shall be removed and replaced with suitable material.

#### 3.2.1 Disposition of Materials

Disposition of excavated soil materials will be determined by the Contracting Officer as to suitability of material for incorporation in structure backfills or cover. Deposition of excavated stone (salvaged stone) will be determined by the Contracting Officer as to the suitability of material for channel bank revetments and rock substrate.

##### 3.2.1.1 Suitable Material

If the material is suitable as excavated, it shall be stockpiled for future use, or shall be utilized in the reshaping of the banks and the construction zone, or used for rock substrate or channel bank revetment, as outlined below for each type of structure. If it is determined that the excavated soil material will be suitable after draining and manipulating, the material shall be stockpiled and allowed to drain or aerate, and when dry enough, shall be utilized. If it is determined that the excavated stone (salvaged stone) will be suitable after cleaning, the material shall be cleaned using a method approved by the Contracting Officer.

##### 3.2.1.2 Unsuitable Material

Excavated soil material that is determined by the Contracting Officer to be too wet or otherwise unsuitable or excess shall be wasted in the disposal area or as directed by the Contracting Officer. Examples of unsuitable soil material include dispersive clays, large boulders or other material that cannot be used as foundation or backfill material. Excavated stone material that is determined to be unsuitable or excess shall be disposed of as specified in SECTION 02000 DESCRIPTION AND MEASUREMENT OF MATERIAL.

#### 3.2.2 Debris

Debris encountered in the excavation operations shall be disposed of as specified under SECTION 02110 CLEARING AND GRUBBING.

#### 3.2.3 Soil Conditions

No soil investigations were made in the construction area. However, it is believed that the materials to be encountered will be natural in-place alluvium deposits consisting of sand, silt, and clay, and that sand will predominate. Some stone fill will also be encountered.

#### 3.2.4 Disposal Areas

Materials which are unsuitable or excess, in the opinion of the Contracting Officer, will be ordered wasted or stock piled and shall be disposed of in approved disposal areas on the project right-of-way. Products from clearing and grubbing operations shall be disposed of as specified in SECTION 02110 CLEARING AND GRUBBING. Waste material shall not be placed in areas adjacent to embankments or the pilot channel. No special compaction will be required in the disposal areas; however, the hauling equipment shall be routed over the area to accomplish as much uniform compaction as possible. All disposal areas, except for the material excavated from the pilot channel, shall be left in a slightly condition and free to drain, with smooth natural appearing contours that blend into the existing surroundings. No excavated material shall be disposed of in the Missouri River or pilot channel areas, or in wetland areas either no-site or off-site.

#### 3.3 PILOT CHANNEL

The pilot channel shall be cut accurately to the cross sections and grades indicated. Care shall be taken not to excavate the pilot channel below the grades indicated. Excessive ditch excavation shall be backfilled to grade with satisfactory, thoroughly compacted material or with suitable stone or as directed. All ditches excavated under this section shall be maintained until final acceptance of the work. No excavated material shall be deposited closer to the edges of the ditches than indicated and in no case less than 3 feet.

#### 3.4 STRUCTURES

##### 3.4.1 Inlet, Outlet and Grade Control Structures, Revetments and Structure Modifications

The alignment of these structures shall be as shown on the drawings. Structure foundations shall conform to the shapes and elevations shown on the drawings. Excavated material will be used as much as possible to fill minor bights and notches in the bank line as directed by the contracting officer. Excess material will be disposed of as specified in paragraph 3.2.4.

#### 3.5 PREPARATION OF GROUND SURFACE FOR FILL

All vegetation, such as roots, brush, heavy sods, heavy growth of grass, and all decayed vegetable matter, rubbish, and other unsatisfactory material within the area upon which fill is to be placed, shall be removed before the fill is started. In no case will unsatisfactory material remain in or under the fill area. Sloped ground surfaces steeper than one vertical to four horizontal on which fill is to be placed shall be plowed, stepped, or broken up, as directed, in such manner that the fill material will bond with the existing surface. Prepared surfaces on which compacted fill is to be placed shall be wetted or dried as may be required to obtain the specified moisture content and density.

### 3.6 FILLS AND EMBANKMENTS

Fills and embankments shall be constructed at the locations and to lines and grades indicated. Stones having a dimension greater than 4 inches shall not be permitted in the upper 6 inches of fill or embankment. The material shall be placed in successive horizontal layers of 8 to 12 inches in loose depth for the full width of the cross section and shall be compacted as specified. Each layer shall be compacted before the overlaying lift is placed. Moisture content of the fill or backfill material shall be adjusted as required, to within plus or minus 4 percent of optimum moisture content as determined from laboratory tests specified in paragraph DEFINITIONS.

### 3.7 COMPACTION

Except for paved areas, each layer of the fill or embankment does not need to be compacted. Areas to be paved shall be compacted to a density of 95 percent the percentage of laboratory maximum density for minimum compacted subgrade thickness of 6 inches. For the areas to be paved below the top 6 inches shall be compacted to a density of 90 percent of the percentage of laboratory maximum density.

### 3.8 FINISHED EXCAVATION, FILLS, AND EMBANKMENTS

All areas covered by the project shall be uniformly smooth-graded, compacted, and free from irregular surface changes. The degree of finish shall be that ordinarily obtainable from blade-grader operations, except as otherwise specified. Ditches shall be finished to permit adequate drainage. The surface of areas to be turfed shall be finished to smoothness suitable for the application of turving materials. For subgrade areas to be paved, the following shall be accomplished as required: (a) soft or otherwise unsatisfactory material shall be replaced with satisfactory excavated material or other approved materials; (b) rock encountered in the cut sections shall be excavated to a depth of 6 inches below finished grade for the subgrade; (c) low areas resulting from removal of unsatisfactory material or from 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 shall be compacted as specified. The surface of embankments or excavated areas for road construction or other areas on which a base course or pavement is to be placed shall vary not more than 0.05 feet from the established grade and approved cross section. Surfaces other than those that are to be paved shall be finished not more than 0.15 feet above or below the established grade or approved cross section.

### 3.9 PLACING TOPSOIL

Exposed earthen surfaces on completed structures that are above the existing ground surface, all disposal areas designated on the drawings, and all other areas disturbed by construction activities shall be seeded in accordance with SECTION 02935 TURF, following final grade. 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 off-site areas.

### 3.10 FIELD TESTING CONTROL

Testing shall be the responsibility of the Contractor and shall be performed by an approved commercial testing laboratory or by the Contractor subject to approval. Field density and moisture content tests shall be performed on every 5000 square feet of each lift placed. Field in-place density shall be determined in accordance with ASTM D 1556 or ASTM D 2167.

### 3.11 PROTECTION

Newly graded areas shall be protected from traffic and from erosion, and any settlement or washing away that may occur from any cause, prior to acceptance, shall be repaired and grades reestablished to the required elevations and slopes. All work shall be conducted in accordance with the environmental protection requirements of the contract.

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SECTION 02220

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**05/02**

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## SECTION 02220

## DEMOLITION

05/02

## 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 the basic designation only.

## AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI)

ANSI A10.6 (1990) Safety Requirements for Demolition Operations

## U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

40 CFR 61-SUBPART M National Emission Standard for Asbestos

## U.S. ARMY CORPS OF ENGINEERS (USACE)

EM 385-1-1 (1996) U.S. Army Corps of Engineers Safety and Health Requirements Manual

## 1.2 GENERAL REQUIREMENTS

Do not begin demolition until authorization is received from the Contracting Officer. The work includes demolition, salvage of identified items and materials, and removal of resulting rubbish and debris. Rubbish and debris shall be removed and placed in areas as indicated on the drawing. In the interest of occupational safety and health, the work shall be performed in accordance with EM 385-1-1, Section 23, Demolition, and other applicable Sections.

## 1.3 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only or as otherwise designated. 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-03 Product Data

Work Plan;

The procedures proposed for the accomplishment of the work. The procedures shall provide for safe conduct of the work, including procedures and methods to provide necessary supports, lateral bracing and shoring when required, careful removal and disposition of materials specified to be salvaged, protection of property

which is to remain undisturbed, coordination with other work in progress, and timely disconnection of utility services. The procedures shall include a detailed description of the methods and equipment to be used for each operation, and the sequence of operations in accordance with EM 385-1-1.

#### SD-07 Certificates

Demolition plan;

Notifications;

Notification of Demolition and Renovation forms;

Submit proposed demolition and removal procedures to the Contracting Officer for approval before work is started.

### 1.4 REGULATORY AND SAFETY REQUIREMENTS

Comply with federal, state, and local hauling and disposal regulations. In addition to the requirements of the "Contract Clauses," safety requirements shall conform with ANSI A10.6.

#### 1.4.1 Notifications

Notify the the Contracting Officer in writing 10 working days prior to the commencement of work in accordance with 40 CFR 61-SUBPART M.

### 1.5 BURNING

The use of burning at the project site for the disposal of refuse and debris will not be permitted.

### 1.6 RELOCATIONS

Perform the removal and reinstallation of relocated items as indicated with workmen skilled in the trades involved. Repair items to be relocated which are damaged or replace damaged items with new undamaged items as approved by the Contracting Officer.

### 1.7 Required Data

Demolition plan shall include procedures for a detailed description of methods and equipment to be used for each operation and of the sequence of operations.

### 1.8 USE OF EXPLOSIVES

Use of explosives will not be permitted.

## PART 2 PRODUCTS (NOT USED)

## PART 3 EXECUTION

### 3.1 EXISTING FACILITIES TO BE REMOVED

#### 3.1.1 Structures

Existing structures indicated shall be removed to five feet below the Construction Reference Plane.

3.2 FILLING (NOT USED)

3.3 DISPOSITION OF MATERIAL

3.3.1 Title to Materials

Except where specified in other sections, all materials and equipment removed, and not reused, shall become the property of the Contractor and shall be removed from Government property. Title to materials resulting from demolition, and materials and equipment to be removed, is vested in the Contractor upon approval by the Contracting Officer of the Contractor's demolition and removal procedures, and authorization by the Contracting Officer to begin demolition. The Government will not be responsible for the condition or loss of, or damage to, such property after contract award.

Materials and equipment shall not be viewed by prospective purchasers or sold on the site.

3.4 Debris and Rubbish

Debris and rubbish shall be removed from the spur dikes and similar excavations. Debris shall be removed and transported in a manner that prevents spillage in the river or adjacent areas. Local regulations regarding hauling and disposal shall apply.

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SECTION 02340

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**02/00**

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## SECTION 02340

STRUCTURES  
02/00

## PART 1 GENERAL

## 1.1 REFERENCES (NOT USED)

## 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:

SD-02 Shop Drawings

Chevron; G-AO

Contractor shall provide a chevron structure survey and layout plan explaining exactly how each chevron will be constructed.

## 1.3 MEASUREMENT OF MATERIALS

Material shall be measured as specified in SECTION 01500 MEASUREMENT AND PAYMENT.

## 1.4 PAYMENT

Separate payment will not be made for the work described in this section. All costs for this work will be included in the appropriate contract unit bid prices.

## PART 2 PRODUCTS (NOT USED)

## PART 3 EXECUTION

## 3.1 INLET CONSTRUCTION (NOT USED)

## 3.2 GRADE CONTROL STRUCTURE (NOT USED)

## 3.3 STRUCTURE MODIFICATION

Existing dikes (stone and piling) shall be modified at the lines and grades shown on the contract drawings. Excess or unsuitable material shall be disposed of.

## 3.4 PLACEMENT

## 3.4.1 Riprap

Riprap shall be placed within the limits shown on the drawings or as

directed by the Contracting Officer's Representative. Riprap shall be placed in such a 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 in one operation and in such a manner as to avoid segregation. Placing riprap in layers will not be permitted. The larger stones shall be well distributed and the entire mass of stones in their final position shall be graded to conform to the gradation specified. The desired distribution of the various sizes of stones throughout the mass shall be obtained by selective loading of the material at quarry or other source. All riprap shall be placed by means of clam shell, orange peel, or skip box. In no instance shall riprap be manipulated, moved, or placed by means of dozers or other blade equipment.

### 3.5 PROTECTION

The Contractor shall maintain the riprap stone until accepted and any material displaced by any cause shall be replaced at his expense to the lines and grades shown on the drawings, except as provided for in Specification Section 00800, paragraph 1.7 Damage to Work.

### 3.6 STONE FILL MATERIAL SELECTION

The stone used in all structures shall conform to SECTION 02000 STONE.

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## SECTION 02935

TURF  
02/00

## PART 1 GENERAL

Seed varieties and quantities specified shall be uniformly distributed over all ground areas disturbed by grading and/or trenching and not otherwise surfaced and in such manner that will produce an even stand of grass over the entire area seeded.

## 1.1 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals having no designation are for information only. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

## SD-01 Preconstruction Submittals

Delivery; .

Delivery schedule, at least 10 days prior to the intended date of the first delivery.

## SD-03 Product Data

Erosion Control Material; .

Manufacturer's literature discussing physical characteristics, application and installation instructions.

Equipment; .

The equipment to be used and calibration test for seed application.

## SD-07 Certificates

Application of Pesticide; .

Pesticide treatment plan with proposed sequence of pesticide treatment work. The pesticide trade name, chemical composition, formulation, concentration, application rate of active ingredients and method of application for all materials; and the name and state license number of the state certified applicator shall be included.

Maintenance Report; .

Written record of all maintenance work performed during the turf establishment period shall be submitted to the Contracting Officer.

Turf Establishment Period; .

Written calendar time period for the turf establishment period. When there is more than one turf establishment period, the boundaries of the turfed

area covered for each period shall be described.

Certificates of compliance certifying that materials meet the requirements specified, in accordance with paragraph MATERIALS, prior to the delivery of materials. Certified copies of the reports for the following materials shall be included:

Seed; G-AO.

For mixture, percent pure live seed, minimum percent germination and hard seed, maximum percent weed seed content, date tested, and state certification.

Fertilizer; .

Soil amendments shall be delivered to the site in the original, unopened containers bearing the manufacturer's chemical analysis and percent composition. In lieu of containers, soil amendments may be furnished in bulk. A chemical analysis shall be provided for bulk deliveries.

Pesticide; .

Pesticide material shall be delivered to the site in the original, unopened containers bearing legible labels indicating the Environmental Protection Agency (EPA) registration number and the manufacturer's registered uses.

## 1.2 DELIVERY, INSPECTION, STORAGE, AND HANDLING

### 1.2.1 Delivery

Notify the Contracting Officer, in writing, 10 days prior to the first delivery.

### 1.2.2 Inspection

Seed shall be inspected upon arrival at the job site by the Contracting Officer for conformity to type and quality in accordance with paragraph MATERIALS. Topsoil and fertilizer, shall be inspected for meeting specified requirements and unacceptable materials shall be removed from the job site.

### 1.2.3 Storage

Materials shall be stored in areas designated by the Contracting Officer. Seed and fertilizer shall be stored in cool, dry locations away from contaminants. Pesticides shall not be stored with other landscape materials.

### 1.2.4 Handling

#### 1.2.4.1 Materials

Except for bulk deliveries, materials shall not be dropped or dumped from vehicles.

## 1.3 MEASUREMENT OF MATERIALS

Material shall be measured as specified in SECTION 01550 MEASUREMENT AND PAYMENT.

1.4 PAYMENT

Separate payment will not be made for the work described in this section. All costs for this work will be included in the appropriate contract unit bid prices.

PART 2 PRODUCTS

2.1 MATERIALS

2.1.1 Seed

2.1.1.1 Seed Classification

State Approved seed of the latest season's crop shall be provided in original sealed packages bearing the producer's guaranteed analysis for percentages of mixture, purity, germination, hard seed, weed seed content, and inert material. Labels shall be in conformance with AMS-01 and applicable state seed laws.

2.1.1.2 Seed Mixtures

Seed mixtures shall be proportioned by weight as follows:

| Common Name  | Rate of Application |
|--|---------------------|
| Little Bluestem (Andropogon scoparius)                   | 8 lbs. per acre     |
| Western Wheatgrass (Agropyron smithii)                   | 4 lbs. per acre     |
| Sideoats Grama-Pierre strain<br>(Bouteloua curtipendula) | 2 lb. per acre      |
| Intermediate Wheatgrass (Agropyron intermedium)          | 4 lbs. per acre     |
| Crested Wheatgrass (Agropyron cristatum)                 | 2 lb. per acre      |
| Slender Wheatgrass (Agropyron pauciflorim)               | 4 lbs. per acre     |
| Total Pounds Pure Live Seed per Acre                     | 24 lbs. per acre    |

Nurse Crop (Mixed with above) Spring Planting 5 pounds per acre  
 Dormant Planting 15 pounds per acre

2.1.1.3 Quality

Weed seed shall not exceed 1 percent by weight of the total mixture. Wet, moldy, or otherwise damaged seed shall be rejected.

2.1.1.4 Temporary Seed

The temporary seed for erosion control shall be as follows:

| Common Name      | Pounds Pure<br>Live Seed per Acre |
|------------------|-----------------------------------|
| Annual Rye Grass | 43                                |

2.1.1.5 Seed Mixing

The mixing of the seed shall be done by the Seed Supplier prior to delivery to the site. Bulk quantities of seed shall be labeled as required in the

paragraph Seed Classification.

#### 2.1.1.6 Commercial Seed Formula

The following formula shall be used to determine the amount of commercial seed required to provide in each kind of seed the specified quantities of Pure Live Seed with Purity and Germination expressed as whole numbers:

$$\frac{\text{Pounds Pure Live Seed} \times 100 \times 100}{\text{Purity} \times \text{Germination}} = \text{Pounds of Seed Required}$$

#### 2.1.2 Soil Amendments

Soil amendments shall consist of fertilizer meeting the following requirements.

##### 2.1.2.1 Fertilizer

Fertilizer shall be commercial grade, free flowing, low in salts, uniform in composition and conforming to CID A-AA-1909. Granular fertilizer shall consist of nitrogen-phosphorus-potassium, ratio: 16 parts nitrogen, 48 parts phosphorus, and 0 parts potassium.

#### 2.1.3 Topsoil

If additional topsoil is required beyond that available from grading operations, it shall be furnished by the Contractor and 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. Topsoil shall be in accordance with Section 02210 GRADING.

#### 2.1.4 Mulch

The Contractor shall use hay or straw fixed in place with Mechanical Anchoring Equipment, on all surfaces. All other mulch materials and/or methods of application shall be approved by the Contracting Officer. Mulch shall be free from weeds, weed seeds, mold, and other objectionable materials.

##### 2.1.4.1 Straw

Straw Mulch shall be long stem threshed straw of oats, wheat or rye that is free from noxious weeds, mold or other objectionable material. The straw mulch shall contain at least 50 percent by weight of the material to be 10 inches or longer. Straw shall be in an air-dry condition and suitable for placing with blower equipment.

##### 2.1.4.2 Hay

Hay shall be native prairie hay furnished in an air-dry condition suitable for placing with commercial mulch-blowing equipment. Hay shall be free of noxious weeds, mold or other objectionable material.

#### 2.1.5 Water

Water shall not contain elements toxic to plant life and shall be obtained

from an approved source prior to use.

#### 2.1.6 Pesticide

The pesticide material shall be EPA registered and approved Herbicide.

#### 2.1.7 Erosion Control Material

Soil erosion control shall conform to the following:

##### 2.1.7.1 Soil Erosion Control Net

All slopes steeper than or equal to 3 horizontal to 1 vertical will require an erosion control net installed over the mulch material. Machine produced net of a biodegradable plastic mesh or interwoven thread specifically manufactured for this purpose.

##### 2.1.7.2 Anchors

Erosion control anchors material shall be as recommended by the manufacturer for the type of erosion control material used.

##### 2.1.7.3 Soil Erosion Control Fence

Silt fencing shall be made of a strong rot-proof synthetic fiber. The fibers shall be resistant to deterioration due to ultraviolet light and heat exposure. The synthetic fibers shall be woven into a fabric. Low porosity silt fence shall be the same as or equal to Propex-Silt Stop, Mirafi 700x, or Beltech 755 or approved equal. Backing for silt fencing shall consist of 6" square type woven wire stock fencing with studded "T" steel fence posts 6 feet long.

### PART 3 EXECUTION

#### 3.1 SEEDING TIMES AND CONDITIONS

##### 3.1.1 Seeding Time

###### 3.1.1.1 Field Seed

Seed shall be sown for spring planting from April 1 to June 15 and for dormant planting from Oct 1 to Nov 1.

###### 3.1.1.2 Environmental Conditions

Turfing operations shall be performed only during periods when beneficial results can be obtained. When drought, excessive moisture or other unsatisfactory conditions prevail, the work shall be stopped when directed.

When special conditions warrant a variance to the operations, proposed times shall be submitted to and approved by the Contracting Officer.

#### 3.2 SITE PREPARATION

##### 3.2.1 Grading

The Contracting Officer shall verify that finished grades are as indicated on the drawings, and the placing of topsoil and smooth grading have been completed in accordance with Section 02210 GRADING. Any deviations therefrom shall be corrected prior to turfing. Soil used for repair of

erosion and correction of grade deficiencies shall conform to that specified in the paragraph Topsoil.

### 3.2.2 Tillage

#### 3.2.2.1 Minimum Depth

Soil on slopes gentler than 3-horizontal-to-1-vertical shall have the soil prepared by loosening the soil to a minimum depth of 12 inches with heavy ripping shanks, then tilled to an 8" depth until the surface soil is prepared to a fine loose soil ready for seeding. Slopes between 3-horizontal-to-1-vertical and 1-horizontal-to-1 vertical shall be prepared similarly to a minimum depth of 6 inches from the top of the slope down when soil conditions and length of slope permit. On slopes 1-horizontal-to-1 vertical and steeper hand tillage is required.

### 3.2.3 Finished Grading

#### 3.2.3.1 Preparation

Turf areas shall be filled as needed or have surplus soil removed to attain the finished grade. Drainage patterns shall be maintained as indicated on drawings. Turf areas compacted by construction operations shall be completely pulverized by tillage. Finished grades adjacent to walks, curbs, pavements, shall be 1 inch below the adjoining surfaced area. New soil surfaces shall be blended to meet existing soil surfaces.

#### 3.2.3.2 Field Area Debris

Field areas shall have debris and stones larger than 3 inches in any dimension removed from the surface.

#### 3.2.3.3 Protection

Finished graded areas shall be protected from damage by vehicular or pedestrian traffic and erosion.

### 3.2.4 Application of Soil Amendments

#### 3.2.4.1 Fertilizer

Fertilizer shall be applied at a rate of 200 pounds of fertilizer mix per acre for field seeding. Fertilizer shall be incorporated into the soil to a minimum depth of 3 inches.

## 3.3 SEEDING

### 3.3.1 General

Prior to seeding, any previously prepared seedbed areas compacted or damaged by interim rain, traffic or other cause, shall be reworked to restore the ground condition previously specified. Seeding operations shall not take place when the wind velocity will prevent uniform seed distribution.

### 3.3.2 Equipment

The equipment to be used and the methods of seeding shall be subject to the inspection and approval of the Contracting Officer prior to commencement of

seeding operations. Immediately prior to the commencement of seeding operations, the Contractor shall conduct seeding equipment calibration tests in the presence of the Contracting Officer.

### 3.3.3 Applying Seed

All seed shall be drill seeded unless when approved by the Contracting Officer the slope of the seeded area is too steep or small for the drill equipment to operate.

#### 3.3.3.1 Broadcast Seeding

Seed shall be uniformly broadcast at the rates specified using broadcast seeders. Half of seed shall be broadcast in one direction, and the remainder at right angles to the first direction. Seed shall be covered to an average depth of 1/4-inch but no more than 3/4-inch by disk harrow, steel mat drag, cultipacker, or other approved device. When broadcast seeded the seed mix quantity shall be applied at twice the rate specified.

#### 3.3.3.2 Drill Seeding

Field seed shall be uniformly drilled to an average depth of 1/2-inch at the rate specified using a Tye, Truax, John Deere Rangeland drill, Brillon or similar. Seeds planted in rows shall be no more than 6 inches apart.

#### 3.3.3.3 Rolling

Immediately after seeding, except for slopes 3-horizontal-to-1 vertical and greater, the entire area shall be firmed with a roller not exceeding 90 pounds for each foot of roller width. Areas seeded with seed drills equipped with rollers or packer wheels shall not be rolled.

### 3.3.4 Mulching

Mulching shall be performed the same day as seeding. Unless specified otherwise mechanical anchoring of mulch shall be performed.

#### 3.3.4.1 Straw or Hay Mulch

Straw or hay mulch shall be spread uniformly, in a continuous blanket, at the rate of 2 tons per acre. Mulch shall be spread by hand, blower-type mulch spreader or other approved method. Mulching shall be started on the windward side of relatively flat areas or on the upper part of a steep slope and continued uniformly until the area is covered. The mulch shall not be bunched. All seeded areas shall be mulched on the same day as the seeding.

#### 3.3.4.2 Mechanical Anchoring

Immediately following spreading, the mulch shall be anchored to the soil by a V-type-wheel land packer, a scalloped-disk land packer designed to force mulch into the soil surface a minimum of 3 inches, or other suitable equipment.

### 3.3.5 Watering Field Seeded Areas

Watering of field seeded areas shall not be required.

## 3.4 EROSION CONTROL MATERIAL

The surface of ditches and slopes to receive soil erosion control material shall be finished to a smooth and even condition with all debris, roots, stones and lumps raked out and removed.

#### 3.4.1 Erosion Control Net

Soil erosion control net shall be unrolled on newly seeded and mulched areas. Apply wire staples vertically through the net into the ground, keeping the net taut against the anchor staples. Erosion control net placement shall be accomplished without damage to the installed mulch or distortion of established grades. Erosion control net shall be installed in accordance with the manufacturer's recommendations.

#### 3.4.2 Erosion Control Fence

Soil Erosion Control Fence shall be installed where indicated on the plans and in those areas required by the Contracting Officer for control of sheet or gully erosion. A six inch deep trench shall be dug just outside the posts for the full length of the silt fence. Set the studded "T" posts a maximum of 6 feet on center. Drive the posts into the ground so that no more than 3 feet protrude above the ground. Attach the woven wire fence to the posts then the fabric to the fencing, and place the fabric into the trench and backfill and compact the soil. All splice joints shall overlap a minimum of 18 inches. Erosion control fence shall be installed as indicated on the drawings.

#### 3.4.3 Maintenance

The erosion control material shall be maintained until all work on the entire contract or designated portion thereof has been completed and accepted. Maintenance shall consist of the repair of eroded areas and the repair or replacement and restapling of loose or undermined erosion control material, including reseeding. The Contractor shall remove the silt on the uphill side of the Silt Fence whenever the silt is within 18 inches of the top of the fence. The silt fence shall be removed at the completion of the project. Silt shall be removed and disposed of as directed by the Contracting Officer. Areas where silt has been removed shall be reseeded and remulched as specified.

#### 3.4.4 Temporary Turf Cover

##### 3.4.4.1 General

When there are contract delays in the turfing operation or a quick cover is required to prevent erosion, the areas designated for turf shall be seeded with a temporary seed as directed by the Contracting Officer.

##### 3.4.4.2 Application

When no other turfing materials have been applied, the quantity of one half of the required soil amendments shall be applied and the area tilled in accordance with paragraph SITE PREPARATION. Seed shall be uniformly broadcast and applied at the rate specified.

#### 3.5 APPLICATION OF PESTICIDE

When necessary to remove weeds, a state-certified applicator shall apply required pesticide in accordance with EPA label restrictions and

recommendations. Hydraulic equipment shall be provided for the liquid application of a pesticide with a leak-proof tank, positive agitation methods, controlled application pressure and metering gauges. A pesticide plan shall be provided to the Contracting Officer as stated in paragraph SUBMITTALS. Cost for pesticide application will be paid for under the CHANGES, CONTRACT CLAUSES CONSTRUCTION.

### 3.6 RESTORATION AND CLEAN UP

#### 3.6.1 Restoration

Existing turf areas, pavements and facilities that have been damaged from the turfing operation shall be restored to original condition at Contractor's expense.

#### 3.6.2 Clean Up

Excess and waste material shall be removed from the planting operation and shall be disposed of off the site. Adjacent paved areas shall be cleaned.

### 3.7 PROTECTION OF TURFED AREAS

Immediately after turfing operations have been completed, the area shall be protected against traffic or other use by erecting barricades and providing signage as required or as directed by the Contracting Officer to provide protection against traffic and trespass.

### 3.8 TURF ESTABLISHMENT PERIOD

#### 3.8.1 Commencement

The Turf Establishment Period for establishing a healthy stand of turf shall begin on the first day of work under this contract and shall end 90 days after the last day of turfing operations required by this contract or until all work on this entire Contract has been completed and accepted, whichever period is longer.

##### 3.8.1.1 Satisfactory Stand of Turf

A satisfactory stand of turf for field seeded areas is defined as having a minimum of 40 grass plants per square foot. The total bare spots shall not exceed 5 percent of the total seeded area.

#### 3.8.2 Maintenance During Turf Establishment Period

##### 3.8.2.1 General

Maintenance of the turfed areas shall include eradicating weeds, eradicating insects and diseases, protecting embankments and ditches from erosion, maintaining erosion control materials and mulch, protecting turfed areas from traffic.

##### 3.8.2.2 Pesticide

Treatment for disease or pest shall be in accordance with paragraph APPLICATION OF PESTICIDE. Pesticide shall not be applied within 3 weeks of grass seed germination and shall meet all Federal, DOD and State guidelines. Pesticide application shall occur when in the opinion of the Contracting Officer the level of weed occurrence exceeds 20% of the stand

or an unacceptable level. The type of pesticide used shall be based upon the type of weed or grass that needs to be removed.

#### 3.8.2.3 Repair

The Contractor shall re-establish as specified herein, eroded, damaged or barren areas. Mulch shall also be repaired or replaced as required.

#### 3.8.2.4 Maintenance Report

A written record shall be furnished to the Contracting Officer of the maintenance work performed. Report shall indicate all dates and procedures performed including pesticide applications, maintaining of erosion control fences, removal of silt, replacement of seeded and mulched areas, etc.

### 3.9 FINAL ACCEPTANCE

See specification SECTION 01451 CONTRACTOR QUALITY CONTROL for final inspection and acceptance.

-- End of Section --