

2. AMENDMENT/MODIFICATION NO. Am-0005	3. EFFECTIVE DATE 07/20/04	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. <i>(If applicable)</i>
6. ISSUED BY CODE		7. ADMINISTERED BY <i>(If other than Item 6)</i> CODE	
U.S. Army Engineer District, Honolulu Corps of Engineers, Bldg. 230 ATTN: CEPOH-CT-C (Jennifer Ko) Fort Shafter, Hawaii 96858-5440			

8. NAME AND ADDRESS OF CONTRACTOR <i>(No., street, county, State and ZIP Code)</i>	(X)	9A. AMENDMENT OF SOLICITATION NO.
	X	W9128A-04-R-0012 9B. DATED <i>(SEE ITEM 11)</i> 06/02/04
		10A. MODIFICATION OF CONTRACT/ORDER NO.
		10B. DATED <i>(SEE ITEM 13)</i>
CODE	FACILITY CODE	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. Accounting and Appropriation Data *(If required)*

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(X)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: <i>(Specify authority)</i> THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES <i>(such as changes in paying office, appropriation date, etc.)</i> SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER <i>(Specify type of modification and authority)</i>

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION *(Organized by UCF section headings, including solicitation/contract subject matter where feasible.)*
 Solicitation No. W9128A-04-R-0012, FY04 MCA PN 52268, Buildings 549 and 552, Whole Barracks Renewal, Phase 4B, Quad E, Schofield Barracks, Oahu, HI

(Continued on Page 2)

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER <i>(Type or print)</i>	16A. NAME AND TITLE OF SIGNER <i>(Type or print)</i>
15B. CONTRACTOR/OFFEROR	16B. UNITED STATES OF AMERICA
_____ <i>(Signature of person authorized to sign)</i>	BY _____ <i>(Signature of Contracting Officer)</i>
15C. DATE SIGNED	16C. DATE SIGNED

1. CHANGES TO SPECIFICATIONS. Attached hereto are revised and new pages to the solicitation. The revision mark (Am-0005) is shown on each revised and new page.

a. REVISED SECTIONS/PAGES/PARAGRAPH. Following are revised pages to the solicitation. Changes are indicated in **bold** print. Although the entire section is being re-issued under (Am-0005) only the following section/page/paragraph changed in this section.

Main Table of Contents

Section 00700

52.202-1, Definitions (May 2001) – Alternate 1 (Jun 2004)

52.211-10, Commencement, Prosecution, and Completion of Work (Apr 1984)

52.225-11, Buy American Act--Construction Materials Under Trade Agreements (June 2004)

Section 00900, Responses to Questions submitted by Planholders (Pages A.1 to A.7)

Chapter 1 paragraph 1-1.2

Chapter 5 paragraphs 5-1.2, 5-1.2.1, 5-3.3, 5-3.6, 5-4.6.1, 5-4.6.1.1, 5-4.6.2, 5-4.9.5.8, 5-7.1.2, 5-7.2.4

Chapter 6 paragraph 6-5.6

Chapter 16 paragraph 16-1, 16-3

Attachment 17, Section 01900, paragraph 1.12.2

b. NEW PAGES/CLAUSES/PROVISIONS/SECTIONS. The following items are added to the solicitation:

Section 00010, Proposal Schedule (Pages 00010-3 to 00010-5)

Section 00100, 52.217-5, Evaluation of Options (Jul 1990)

Section 00700, Appendix A, Davis Bacon Wage Determination Hawaii, dated 07/16/2004

Section 00800, S-17.1, Option for Increased Scope –Separately Priced Line Item (Apr 1996)

Section 00900, Responses to Questions submitted by Planholders (Pages A.8 to A-18)

Statement of Work Table of Contents

Chapter 2

Attachment Table of Contents (Page SOW-6)

Attachment 3

Attachment 17, Project Table of Contents

Attachment 17, Section 01430

Attachment 19

Attachment 20

Attachment 21

c. DELETED PAGES/CLAUSES/PROVISIONS/SECTIONS. The following items are deleted from the solicitation:

Section 00010, Proposal Schedule (Pages 00010-3 and 00010-4)

Section 00700, Appendix A, Davis Bacon Wage Determination Hawaii, dated 03/26/2004

Statement of Work Table of Contents

Chapter 2

Attachment Table of Contents (Page SOW-6)

Attachment 3

Attachment 17, Project Table of Contents

2. The proposal closing date of July 28, 2004, 2:00 P.M., Hawaiian Standard Time, remain unchanged.

MAIN TABLE OF CONTENTS

Request for Proposal No. W9128A-04-R-0012, FY04 MCA PN 52268, Buildings 549 and 552, Whole Barracks Renewal, Phase 4B, Quad E, Shcofield Barracks, Oahu, Hawaii

Section 00010	SF 1442, Bidding Schedule
Section 00100	Instructions, Conditions, and Notices to Bidders
Section 00120	Proposal Submission Requirements and Evaluation Factors for Award
Section 00600	Representations and Certifications
Section 00700	Contract Clauses
Section 00800	Special Contract Requirements
Section 00900	Responses to Questions submitted by Planholders

Statement of Work dated 9 April 2004

Instructions to Offerors:

1. THIS PROCUREMENT IS UNRESTRICTED.
2. The Contractor is required to COMPLETE AND RETURN a hard copy of the following sections of this solicitation: SECTION 00010 (ALL) and SECTION 00600 (ALL) and all Appendices. Offerors shall also follow instructions in Section 00120, "Proposal Submission Requirements and Evaluation Factors".
3. See Section 00700, DFARS clause 52.204-7004, Required Central Contractor Registration (CCR) regarding registration in the CCR database. Lack of registration in the CCR database will make an offeror ineligible for award.

SECTION 00010
PROPOSAL SCHEDULE

FY04 MCA PN52268, Buildings 549 and 552,
Whole Barracks Renewal, Phase 4B, Quad E
Schofield Barracks, Hawaii

ITEM NO. DESCRIPTION	QUANTITY	UNIT	AMOUNT
Base Schedule:			
1. Design Work Bldg. 549 and 552	1	Job	\$ _____
2. Construction Work 549 and 552	1	Job	\$ _____
Total Base Schedule			\$ _____
Option:			
3. Sergeant Smith Theater Parking Lot	1	Job	\$ _____
Total Base Schedule plus Option			\$ _____

THE FOLLOWING WILL BE COMPLETED BY THE CONTRACTING OFFICER UPON AWARD:

TOTAL AWARD AMOUNT (Base Schedule plus Options Nos. _____) \$ _____

NOTES TO PROPOSAL SCHEDULE:

1. By submission of an offer under the OPTION, Offeror agrees that the Government may exercise the OPTION at the time of award, or at any time within 90 days following the date of the award of the basic contract. (See Provision No. 52.217-5, EVALUATION OF OPTIONS, in Section 00100 and Section 00800, S-17.1, OPTION FOR INCREASED SCOPE -- SEPARATELY PRICED LINE ITEM).

2. If contaminated soil is encountered during construction, the Contractor may be required to provide or perform some of the following items. To minimize delays associated with encountering contaminated soil during construction, Offeror shall provide a unit price for each of the following items. The unit price for each item must reflect the total cost (including direct costs, indirect costs, markups, etc.) for that specific item. If contaminated soil is encountered during construction, the Contractor shall promptly notify the Contracting Officer that such a condition has been encountered, describe the condition encountered, and provide a listing of which of the following items will be required. Upon notification of encountering contaminated soil, the Contracting Officer will promptly investigate the matter, and if necessary, issue a modification directing the Contractor to proceed with any or all of the required items (using the following unit prices):

A.	<u>DESCRIPTION</u>	<u>Unit</u>	<u>Unit Price</u>
	1) Prepare Sampling Analysis Plan	Ea	\$ _____
	2) Prepare Site Safety and Health Plan	Ea	\$ _____
	3) Perform Tests:		

a) Polynuclear Aromatic Hydrocarbons (PAHs)	Ea	\$ _____
b) Aromatic and Halogenated Volatile Organic Compounds (including Methyl Ethyl Ketone)	Ea	\$ _____
c) Lead/Cadmium	Ea	\$ _____
d) Polychlorinated Biphenyls (PCBs)	Ea	\$ _____
e) TPH- Diesel/Oil Range Organics (Excavated area)	Ea	\$ _____
f) TPH-Gasoline Range Organics	Ea	\$ _____
g) TCLP (stockpile)	Ea	\$ _____
h) TPH- Diesel/Oil Range Organics (Stockpiles)	Ea	\$ _____
4) Handling of Contaminated Soil		
a. Remove and Dispose Contaminated Soil	CY	\$ _____
b. Replace with New Soil	CY	\$ _____

B. PAYMENT

The Item numbers described below correspond to the item numbers above in Note 5A.

- a. Item No. 1) Prepare Sampling Analysis Plan, will be paid for at the contract unit price, including all incidental items necessary to complete the work.
- b. Item No. 2) Prepare Site Safety and Health Plan, will be paid for at the contract unit price, including all incidental items necessary to complete the work.
- c. Item No. 3)a, 3)b, 3)c, 3)d, 3)e, 3)f, 3)g, and 3)h. Perform Tests, will be paid for at the contract unit price, including sampling, analyses, reports and all incidental items necessary to complete the work.
- d. Item No.4a), Remove and Dispose Contaminated Soil:
 - (1) Measurement for payment will be to the nearest cubic yard of contaminated soil acceptably removed and disposed.
 - (2) Payment for contaminated soil acceptably removed and disposed will be made at the applicable contract unit price per cubic yard, including, cleanup, and all incidental items necessary to complete the work.
- e. Item No.4b), Replace with New Soil:
 - (1) Measurement for payment will be to the nearest cubic yard of new soil placed.
 - (2) Payment for new soil placed will be made at the applicable contract unit price per cubic yard, including, cleanup, and all incidental items necessary to complete the work.

PAYMENT(S)

Compensation for all work to be performed under this contract will be made under the payment item(s) listed herein. Price(s) and payment(s) for the item(s) shall cover all work, complete and finished in accordance with the specifications, schedules, and drawings, and shall be full compensation for all work in connection therewith, including quality control and cost of performance-and payment-bond premiums as specified in the CONTRACT CLAUSES. Price(s) and payment(s) shall constitute full and final compensation for furnishing all materials, equipment, management, supervision, labor, transportation, fuel, power, water, and all incidental items necessary to complete the work, except as otherwise specified to be furnished by the Government. For the purpose of CONTRACT CLAUSE entitled "PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS", the term "designated billing office" and "designated payment office" are as follows:

- a. Billing Office
U.S. Army Engineer District, Honolulu
Schofield Barracks Resident Office, Bldg. 230
Fort Shafter, HI 96858-5440

- b. Payment Office
USACE Finance Center
Attn: CEFC-FP
5722 Integrity Drive
Millington, TN 38054-5005

Item numbers mentioned herein after correspond to the item numbers in the PROPOSAL SCHEDULE.

a. Item Nos. 1, Design Work, will be paid for at the contract price, to include design for, site preparation, building, waterlines, sanitary-sewer system, storm-drainage system, pavement, concrete sidewalks, curbs, and gutters, landscaping, mechanical work, electrical work, and all incidental items necessary to complete the work.

b. Item Nos. 2, Construction Work, will be paid for at the contract price, complete in place and ready for use, including site preparation, building, waterlines, sanitary-sewer system, storm-drainage system, pavement, concrete sidewalks, curbs, and gutters, establishment of turf, mechanical work, electrical work, testing, final connections, cleanup, and all incidental items necessary to complete the work.

c. Item Nos. 3, Sergeant Smith Theater Parking Lot, Option Item, will be paid for at the contract price, complete in place and ready for use, including site preparation, pavement, concrete sidewalks, curbs, and gutters, cleanup, and all incidental items necessary to complete the work.

-- End of Section --

Section 00100 - Bidding Schedule/Instructions to Bidders

52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (OCT 2003)

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

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

(1) An offeror may obtain a DUNS number--

(i) 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 name.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company physical street address, city, state and Zip Code.

(iv) Company mailing address, city, state and Zip Code (if separate from physical).

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(End of provision)

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 2003)

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.dla.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) 697-2179, Facsimile (215) 697-1462.

(End of provision)

52.211-14 NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE USE (SEP 1990)

Any contract awarded as a result of this solicitation will be DX rated order; **X** DO rated order certified for national defense use under the Defense Priorities and Allocations System (DPAS) (15 CFR 700), and the Contractor will be required to follow all of the requirements of this regulation. [Contracting Officer check appropriate box.]

(End of provision)

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

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

(End of provision)

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

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

(End of provision)

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

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

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

“In writing or written” means any worded or numbered expression which 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, or revision, of proposals.

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

(ii)(A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it

is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--

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

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

(3) It is the only proposal received.

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

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

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

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

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

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

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

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

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

(d) Offer expiration date. Proposals in response to this solicitation will be valid for the number of days

specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) A summary of the rationale for award.

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

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

(End of provision)

52.215-16 FACILITIES CAPITAL COST OF MONEY (JUN 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)

52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a firm fixed price construction contract resulting from this solicitation.

(End of clause)

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).

(End of Provision)

52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade	Goals for female participation for each trade
69.1%	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's 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 Schofield Barracks, Oahu, Hawaii.

(End of provision)

52.225-12 NOTICE OF BUY AMERICAN ACT REQUIREMENT-- CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (JAN 2004)

(a) Definitions. Construction material, designated country construction material, domestic construction material, foreign construction material, and FTA 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 FTA 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 FTA 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 FTA country construction material, and the offeror shall be required to furnish such domestic, designated country, or FTA 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)

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 acknowledgment of receipt from

U.S. Army Engineer District, Honolulu
Corps of Engineers, Bldg. 230
ATTN: CEPOH-CT
Fort Shafter, HI 96858-5440

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

(End of provision)

52.236-27 SITE VISIT (CONSTRUCTION) (FEB 1995) – ALTERNATE I (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) An organized site visit has been scheduled for: June 16, 2004, 9:00 a.m.

Participants will meet at: 1st Floor, Bldg. 549, Schofield Barracks, Oahu, Hawaii

(End of provision)

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)

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.

(End of provision)

S-19.1 APPROVAL OF SUBCONTRACTING PLAN

If the Contract Clause in this solicitation entitled "Small Business Subcontracting Plan" or its Alternate I or II applies, no award will be made until the subcontracting plan under the stated clause is approved.

[End of Statement]

S-19.3 SMALL DISADVANTAGED BUSINESS GOAL FOR SMALL BUSINESS SUBCONTRACTING PLAN

When a small business subcontracting plan is required by FAR clause entitled, "SMALL BUSINESS SUBCONTRACTING PLAN", the minimum goal that will be accepted for subcontracting with Small Disadvantaged Business is five percent (5%).

[End of Statement]

S-2 ASBESTOS ABATEMENT (AUG 1996)

Asbestos abatement is part of the scope of work for the proposed contract. Refer to paragraphs entitled, "ASBESTOS --- (OCCUPATIONAL HEALTH AND ENVIRONMENTAL)" in Section 00800 and applicable sections of the technical specifications and drawings. The Contractor shall inform responsible representatives of their insurer(s)/surety(ies) that asbestos abatement is required for the proposed contract.

[End of Statement]

S-28.1 EXECUTION OF BID BOND (AUG 1994)

If the bidder's name and address on the bid form (Standard Form 1442) and those on the bid bond form (Standard Form 24) are different from each other, the bid may be rejected as nonresponsive. Accordingly, for its own protection, each bidder shall see to it that the name and address on both forms are identical.

[End of Statement]

S-28.3 PENAL SUM AND FORM OF BID GUARANTEE

(Applicable to offers exceeding \$100,000)

Each offeror shall submit with its offer a separate bid guarantee using Standard Form 24, Bid Bond, with good and sufficient surety or sureties acceptable to the Government, or other security as provided in the clause entitled BID GUARANTEE in the CONTRACT CLAUSES section. This security shall be in the form of twenty percent (20%) of the offered price or three million dollars (\$3,000,000), whichever is less. The penal sum of the bond may be expressed in terms of a percentage of the offered price or may be expressed in dollars and cents.

Failure to submit a bid guarantee by the time and date set for receipt of proposals may be cause for rejection of a proposal, except as provided in provision 52.215-1, Instructions to Offerors--Competitive Acquisition.

[End of Statement]

S-36.2 MAGNITUDE OF THE PROPOSED PROJECT [FAR 36.204]

(a) Physical Characteristics:

Whole Barracks Renewal Phase 4B, is to renovate Bldg 549 to provide battalion and company administrative functions and Bldg 552 to provide unaccompanied enlisted personnel housing.

(Am-0005)

Supporting facilities include electrical service, fire protection and fire alarm systems, paving, walks, curbs and gutters, storm drainage, information systems, ATPF and site improvements.

(b) Estimated Price Range: The estimated price range of this work is: \$25,000,000.00 and \$100,000,000.00.

[End of Statement]

S-36.33 NOTIFICATION TO OFFERORS – ACCESS TO ARMY INSTALLATIONS.

All vehicle operators must be prepared to provide a valid driver's license, vehicle registration, certificate of insurance and current safety inspection to the security guard prior to entry to the Installation. Offerors should anticipate a delay in entering the Installation and allow sufficient time when attending a site visit or pre-proposal conference or hand delivering an offer.

S-4.1 JOINT VENTURE OFFERORS (JUN 2003)

All Offerors in a Joint Venture shall submit their executed joint venture agreement. In addition, Joint Venture firms must obtain/submit their tax identification number (TIN), Data Universal Numbering System (DUNS) No., Section 00600, Representations and Certifications and register in Central Contractor Registration (CCR) as a joint venture.

Section 00700 - Contract Clauses

52.202-1 DEFINITIONS (MAY 2001) --ALTERNATE I (JUN 2004)

(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 or specific outcomes to be achieved and 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 or a specific outcome to be achieved. 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 subparagraphs (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.

(g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of Clause)

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) of this clause, 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.

(End of clause)

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.

(End of clause)

52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995)

(a) Definitions.

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

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

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

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

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

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

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

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

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

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

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

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

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

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting

agency if the agency does not have an inspector general, or the Department of Justice.

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

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

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

52.203-8 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 1996 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 subsections 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.

(End of clause)

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 by the amount 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.

(End of clause)

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 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.

(c) Disclosure.

(1) 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.

(2) 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--

(i) 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

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

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

(3) 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.

(4) 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.

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

(e) Penalties.

(1) 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.

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

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

(End of clause)

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)

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)

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the \$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 principles, is or is not debarred, suspended, or proposed for debarment by the Federal

under the Termination clause.

(End of clause)

~~52.211-13 — TIME EXTENSIONS (SEP 2000)~~

~~Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.~~

~~(End of clause)~~

52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (SEP 1990)

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).

(End of clause)

~~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 judgment of the Contracting Officer, is justified.~~

52.215-2 AUDIT AND RECORDS--NEGOTIATION (JUN 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 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)

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

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

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

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

(1) The actual subcontract; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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)

52.215-13 SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

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

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

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or

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

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

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

(End of clause)

52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

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

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

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

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

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

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include--

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each

offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

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

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

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

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

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

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

(End of clause)

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)

52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)

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

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

Definitions. As used in this contract--

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

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

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

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Small disadvantaged business concern means a small business concern that represents, as part of its offer that--

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

Veteran-owned small business concern means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern--

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(End of clause)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002)--ALTERNATE II (OCT 2001).

(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) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owner small business, HUBZone small business, 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-owner 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 a 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, 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 HUBZone small business concerns;

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

(vi) 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) HUBZone small business concerns;

(iv) Small disadvantaged business concerns; and

(v) 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, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net 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) HUBZone small business concerns;

(iv) Small disadvantaged business concerns; and

(v) 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, 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, 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, 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-owner 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, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

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

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

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

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

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

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

(F) 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-owner 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-owner 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-owner 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-owner 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-owner 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)

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 the 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.

(End of clause)

52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—
DISADVANTAGED STATUS AND REPORTING (OCT 1999)

(a) Disadvantaged status for joint venture partners, team members, and subcontractors. This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern, is identified as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

(b) Reporting requirement. If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, or in the Contractor's own format providing the same information. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, reports may be submitted with the final Subcontracting Report for Individual Contracts (Standard Form 294) at the completion of the contract.

(End of clause)

52.222-3 CONVICT LABOR (JUN 2003)

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

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

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

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

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

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

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

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

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

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

(End of clause)

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

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 the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (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.

(a) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

(Am-0005)

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.

(End of clause)

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 the 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 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.

(End of clause)

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 no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. 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.

(End of clause)

52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

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

(End of clause)

52.222-11 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.

(ii) 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.

(End of clause)

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.

(End of clause)

52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

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

(End of clause)

52.222-14 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 or their representatives.

(End of clause)

52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

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

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

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

(End of clause)

52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

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

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

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

(End of clause)

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 subparagraphs (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)

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 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 rest rooms and necessary dressing or sleeping areas 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.

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).

(End of clause)

~~52.222-29 — NOTIFICATION OF VISA DENIAL (JUN 2003)~~

~~It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10). The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political Military Affairs (PM), 2201 C Street NW., Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.~~

~~(End of clause)~~

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)

52.222-36 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 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 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 a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

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 disabled veterans and the number of veterans of the Vietnam era 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 that total, the number of disabled veterans, and the number of veterans of the Vietnam era.
- (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- (c) Reports shall be submitted 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 during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous 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 count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era 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 the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

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

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

Material (If none, insert "None")	Identification No.
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(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

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

award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

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

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

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

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

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

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

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

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

(End of clause)

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

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

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

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

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

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

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

(End of clause)

52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

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

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall-- within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration--

- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establish an ongoing drug-free awareness program to inform such employees about--
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;
 - (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.
 - (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
 - (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
 - (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or

debarment.

(End of clause)

52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (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."

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 _____ [Contracting Officer complete in accordance with agency procedures].

(End of clause)

52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

(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 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.)), 5169, 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)

52.225-11 BUY AMERICAN ACT--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (JUNE 2004)

(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, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Cyprus, Czech Republic, Denmark, Djibouti, Equatorial Guinea, Estonia, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Kiribati, Korea-Republic of, Latvia, Lesotho, Liechtenstein, Lithuania, Luxembourg, Malawi, Maldives, Mali, Malta, Mozambique, Nepal, Netherlands, Niger, Norway, Poland, Portugal, Rwanda, Sao Tome and Principe, Sierra Leone, Singapore, Slovak Republic, Slovenia, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

“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.

“Free Trade Agreement country” means Canada, Chile, Mexico, or Singapore.

“Free Trade Agreement country construction material means” a construction material that--

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

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

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

(b) 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 Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country and FTA country construction materials.

(2) The Contractor shall use only domestic, designated country, or FTA 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: 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) *
<i>Item 1</i>			
Foreign construction material			
Domestic construction material			
<i>Item 2</i>			
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).]*

(e) United States law will apply to resolve any claim of breach of this contract.

(End of clause)

52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (DEC 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 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 Web site at <http://www.treas.gov/ofac>.

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

(End of clause)

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.)

(End of clause)

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 copyright 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.to exceed the dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR).

(End of clause)

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

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

(End of clause)

52.228-1 BID GUARANTEE (SEP 1996)

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

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

(c) The amount of the bid guarantee shall be 20 percent of the bid price or \$3,000,000.00, whichever is less.-

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

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

(End of clause)

52.228-2 ADDITIONAL BOND SECURITY (OCT 1997)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if--

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this

contract becomes unacceptable to the Government.

(b) Any surety fails to furnish reports on its financial condition as required by the Government;

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

(End of clause)

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

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe, or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of clause)

52.228-11 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.

(End of clause)

52.228-14 IRREVOCABLE LETTER OF CREDIT (DEC 1999)

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and--

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Miller Act, the later of--

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of--

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of less than \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of less than \$25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

[Issuing Financial Institution's Letterhead or Name and Address]

Issue Date _____

IRREVOCABLE LETTER OF CREDIT NO. _____

Account party's name _____

Account party's address _____

For Solicitation No. _____(for reference only)

TO: [U.S. Government agency]

[U.S. Government agency's address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$_____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

[Confirming Financial Institution's Letterhead or Name and Address]

(Date) _____

Our Letter of Credit Advice Number _____

Beneficiary: _____ [U.S. Government agency]

Issuing Financial Institution: _____

Issuing Financial Institution's LC No.: _____

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [name of issuing financial institution] for drawings of up to United States dollars _____/U.S. \$_____ and expiring with our close of business on _____ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

[City, State]

(Date) _____

[Name and address of financial institution]

Pay to the order of _____ [Beneficiary Agency] _____ the sum of United States \$_____. This draft is drawn under Irrevocable Letter of Credit No.

[Beneficiary Agency]

By: _____

(End of clause)

52.228-15 PERFORMANCE AND PAYMENT BONDS--CONSTRUCTION (JUL 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)

52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 2003)

(a) As used in this clause--

"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.

"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.

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.

(End of clause)

52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (SEP 2002)

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

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

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

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

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

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

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

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

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

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

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

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that--

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

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

United States Code;

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

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

(Name)

(Title)

(Date)

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

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

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

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

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

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

(f) Title, liability, and reservation of rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed

as--

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

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

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

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

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

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

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

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

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

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

(End of clause)

52.232-17 INTEREST (JUNE 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. reproduce, prepare derivative works, distribute copies to the public, and (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.

(End of clause)

52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986) - ALTERNATE I (APR 1984)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(End of clause)

52.232-27 PROMPT PAYMENT 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 use:

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

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

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

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under

the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

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

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

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

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

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

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

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

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

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

(i) Make such payment within--

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

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

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

(5) Notice to Contracting Officer. Notify the Contracting Officer upon--

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--

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

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

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

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

(f) Third-party deficiency reports--(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with 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)

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) 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.

(f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(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)

52.233-1 DISPUTES. (JUL 2002)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim -

(A) Exceeding \$100,000; or

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

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

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in

accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

52.233-3 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.

(End of clause)

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

The Contractor shall perform on the site, and with its own organization, work equivalent to at least fifteen (15) percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

(End of clause)

52.236-2 DIFFERING SITE CONDITIONS (APR 1984)

As prescribed in 36.502, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The Contracting Officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

(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.

(End of clause)

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.

(End of clause)

52.236-4 PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of topographic surveys, as-built drawings, auger borings and site investigations.

(b) Weather conditions: Tropical. Data on temperature and rainfall may be obtained from the National Weather Service.

(c) Transportation facilities: The Contractor shall make his own investigation of the condition and availability of public and private roads as well as clearances, restrictions, and load limits of bridges.

(d) Security Requirements. The Contractor shall comply with the industrial security requirements of the Army. Contractor personnel requiring access to the military installation in connection with the contract may be subject to security investigation and shall be admitted to only those parts of the installation or building(s) where their presence is required. While on the job, Contractor employees shall display identification as may be required under the Special Contract Requirements paragraph 'Identification of Employees.' Vehicles operating on the military installation are subject to search by security personnel at any time. Immediately upon receipt of notice to proceed, the Contractor shall furnish to the Contracting Officer the following:

(i) A roster of all employees who will need access to the military installation in connection with the contract. The roster shall be submitted in three copies. If requested in writing by the Contracting Officer, additional personnel data shall also be furnished.

(ii) A list of automotive vehicles which will be used on the military installation in connection with the contract. The list shall include make, year, license number, details of insurance coverage required by the Special Contract Requirements paragraph "Required Insurance", and expiration date of safety inspection decal. The list of automotive vehicles shall be submitted in four copies. The Contractor shall be responsible for vehicle permits issued to him and its subcontractors. When so authorized by the Contracting Officer, the Contractor may coordinate directly with the military police concerning permits

for contractor-owned vehicles. Privately-owned vehicles used by Contractor personnel must be registered with the military police by the individual owners.

(End of Clause)

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.

(End of clause)

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 worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(End of clause)

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

(Am-0005)

under the contract.

(End of clause)

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.

(End of clause)

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 refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

(End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

52.236-13 ACCIDENT PREVENTION (NOV 1991) – 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.
- (d) 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.
- (c) 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 subcontracts.
- (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.
- (End of clause)

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.

(End of clause)

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.

(End of clause)

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.

(End of clause)

52.236-25 REQUIREMENTS FOR REGISTRATION OF DESIGNERS (JUN 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)

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.

(End of clause)

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.

(End of clause)

52.242-14 SUSPENSION OF WORK (APR 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and

the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract. (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of clause)

52.243-4 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.

(End of clause)

52.245-1 PROPERTY RECORDS (APR 1984)

The Government shall maintain the Government's official property records in connection with Government property under this contract. The Government Property clause is hereby modified by deleting the requirement for the Contractor to maintain such records.

(End of clause)

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) of this section.

(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.

(End of clause)

52.248-3 VALUE ENGINEERING--CONSTRUCTION (FEB 2000) - ALTERNATE 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) below.

(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) below).

"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 subparagraphs (1) through (7) below. 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) below.

(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 shall 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 shall 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 shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall 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 applies 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) 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) above, the Contractor's allowable development and implementation costs shall include any subcontractor'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.

(h) 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.)

(j) Collateral savings. If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.

(End of clause)

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (MAY 2004) - ALTERNATE I (SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining 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 (g) 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 modified, and the Contractor paid the agreed amount. Paragraph (g) 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 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 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 or request for equitable adjustment 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.

(End of clause)

52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

- (a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.
- (b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages

under this clause, if--

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

(i) acts of God or of the public enemy,

(ii) acts of the Government in either its sovereign or contractual capacity,

(iii) acts of another Contractor in the performance of a contract with the Government,

(iv) fires,

(v) floods,

(vi) epidemics,

(vii) quarantine restrictions,

(viii) strikes,

(ix) freight embargoes,

(x) unusually severe weather, or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c.) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(End of clause)

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)

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE- CONTRACT-RELATED FELONIES (MAR 1999)

(a) Definitions. As used in this clause—

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

(i) Attempting to obtain;

(ii) Obtaining, or

(iii) Performing a contract or first-tier subcontract of any agency, 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 judgment 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 the board of directors of any DoD contractor or first-tier subcontractor;
 - (3) As a consultant, agent, or representative for 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 5 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 specified in paragraph (b) of this clause; or
 - (2) Allowing such a person to serve on the board of directors of the 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 person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

(End of clause)

252.203-7002 DISPLAY OF DOD HOTLINE POSTER (DEC 1991)

(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 the 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.

(e) The Contractor 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.

(End of clause)

252.204-7000 DISCLOSURE OF INFORMATION (DEC 1991)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless--

(1) The Contracting Officer has given prior written approval; or

(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

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.

(End of clause)

252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION ALTERNATE A (NOV 2003)

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

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

“Commercial and Government Entity (CAGE) code” means--

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

(2) A code assigned by a member of the North Atlantic Treaty Organization that DLIS records and maintains in the CAGE master file. This type of code is known as an “NCAGE code.”

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

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

“Registered in the CCR database” means that--

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

(2) The Contractor's CAGE code is in the CCR database; and

(3) The Government has validated all mandatory data fields and has marked the records “Active.”

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

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

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

(1) An offeror may obtain a DUNS number--

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

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

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

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and Zip Code.

(iv) Company Mailing Address, City, State and Zip Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

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

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

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

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

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

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

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

(End of clause)

252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS
(DEC 1991)

(a) Definition.

"Cooperative agreement holder" means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450 (c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

252.209-7000 ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ONSITE INSPECTION
UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts exceeding the simplified acquisition threshold in part 13 of the Federal Acquisition Regulation, except those for commercial items.

(End of clause)

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 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 notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(End of clause)

252.215-7000 PRICING ADJUSTMENTS (DEC 1991)

The term "pricing adjustment," as used in paragraph (a) of the clauses entitled "Price Reduction for Defective Cost or Pricing Data - Modifications," "Subcontractor Cost or Pricing Data," and "Subcontractor Cost or Pricing Data - Modifications," means the aggregate increases and/or decreases in cost plus applicable profits.

(End of clause)

252.222-7000 RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (MAR 2000)

(a) The Contractor shall employ, for the purpose of performing that portion of the contract work in Hawaii, individuals who are residents thereof and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor shall insert the substance of this clause, including this paragraph (b), in each subcontract awarded under this contract.

(End of clause)

252.223-7001 HAZARD WARNING LABELS (DEC 1991)

(a) "Hazardous material," as used in this clause, is defined in the Hazardous Material Identification and Material Safety Data clause of this contract.

(b) The Contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 et seq). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labeling requirements of one of the following statutes:

(1) Federal Insecticide, Fungicide and Rodenticide Act;

(2) Federal Food, Drug and Cosmetics Act;

(3) Consumer Product Safety Act;

(4) Federal Hazardous Substances Act; or

(5) Federal Alcohol Administration Act.

(c) The Offeror shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data clause of this contract will be labeled in accordance with one of the Acts in paragraphs (b)(1) through

(5) of this clause instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

MATERIAL (If None, Insert "None.")

ACT

(d) The apparently successful Offeror agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this contract.

(e) The Contractor shall also comply with MIL-STD-129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

(End of clause)

252.223-7004 DRUG-FREE WORK FORCE (SEP 1988)

(a) Definitions.

(1) "Employee in a sensitive position," as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security; health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) "Illegal drugs," as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of title 21 of the United States Code, the possession of which is unlawful under

chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, and efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing--

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employees has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11, 1988), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such times as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing program shall not apply to the extent that are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

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.

(End of clause)

252.225-7005 IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (APR 2002)

(a) This clause applies only if the Contractor is--

(1) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is not incorporated in the United States); or

(2) An unincorporated concern having its principal place of business in the United States.

(b) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment that represents estimated expenditures in the United States. The identification--

- (1) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment;
- (2) Should be based on reasonable estimates; and
- (3) Shall state the full amount of the payment requested, subdivided into the following categories:
 - (i) U.S. products--expenditures for material and equipment manufactured or produced in the United States, including end products, components, or construction material, but excluding transportation;
 - (ii) U.S. services--expenditures for services performed in the United States, including all charges for overhead, other indirect costs, and profit under construction or service contracts;
 - (iii) Transportation on U.S. carriers--expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and
 - (iv) Expenditures not identified under paragraphs (b)(3)(i) through (iii) of this clause.
- (c) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor's books or records.

(End of clause)

252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES, AND 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)

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)

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.

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 Defense FAR Supplement, in effect on the date of this contract.

(End of clause)

252.236-7000 MODIFICATION 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

(v) Overhead; and

(2) Must 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.

252.236-7001 CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS (AUG 2000)

(a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.

(b) The Contractor shall--

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general--

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the

work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

See Statement of Work, Attachment 8, List of Drawings-RFP Concept Design.

(End of clause)

252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

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

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 (FAR); 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.

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAY 2002)

(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 vessels 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 contracts 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 Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., 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 shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief--

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL		

(g) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, the Contractor shall flow down the requirements of this clause as follows:

- (1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

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) The Contractor shall include this clause; including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties--

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for--

(i) Noncommercial items; or

(ii) Commercial items that--

(A) 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);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(End of clause)

GENERAL DECISION: **HI20030001** 07/16/2004 HI1

Date: July 16, 2004

General Decision Number: **HI20030001** 07/16/2004

Superseded General Decision Number: HI020001

State: Hawaii

Construction Types: Building, Heavy (Heavy, and Dredging), Highway and Residential

Counties: Hawaii Statewide.

BUILDING CONSTRUCTION PROJECTS; RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories); HEAVY AND HIGHWAY CONSTRUCTION PROJECTS AND DREDGING

Modification Number	Publication Date
0	06/13/2003
1	01/02/2004
2	01/23/2004
3	03/05/2004
4	03/12/2004
5	03/26/2004
6	07/16/2004

ASBE0132-001 03/02/2003

	Rates	Fringes
Asbestos Workers/Insulator Includes application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems. Also the application of firestopping material for wall openings and penetrations in walls, floors, ceilings and curtain walls.....	\$ 30.45	17.34

BOIL0204-001 10/01/1998

	Rates	Fringes
Boilermaker.....	\$ 26.25	13.76

BRHI0001-001 03/01/2003

	Rates	Fringes
Bricklayer Bricklayers, Cement Block Layers, Stonemasons.....	\$ 26.85	17.47

Cement Block Layers; and
 Stonemasons.....\$ 26.35 16.72

BRHI0001-002 09/01/2003

	Rates	Fringes
Terrazzo Worker		
Terrazzo Base Grinders.....\$	25.29	17.47
Terrazzo Floor Grinders and Tenders.....\$	23.74	17.47
Terrazzo Workers.....\$	27.10	17.47

BRHI0001-003 03/01/2003

	Rates	Fringes
Marble Mason.....\$	26.60	16.72

BRHI0001-004 03/01/2003

	Rates	Fringes
Pointer, cleaner and caulker...\$	26.60	16.72
Tile Layer (Ceramic).....\$	26.60	16.72
Tile Layer Finisher (Ceramic)..\$	23.24	16.72

CARP0745-001 09/01/2003

	Rates	Fringes
Carpenters:		
Carpenters; Hardwood Floor Layers; Patent Scaffold Erectors (14 ft. and over); Piledrivers; Pneumatic Nailers; Wood Shinglers and Transit and/or Layout Man.....\$	31.55	16.42
Carpenters; Hardwood Floor Layers; Patent Scaffold Erectors (14 ft. and over); Piledrivers; Pneumatic Nailers; Wood Shinglers; and Transit and/or Layout Man.....\$	30.90	15.45
Millwrights and Machine Erectors.....\$	31.80	16.42
Power Saw Operators (2 H.P. and over).....\$	31.05	15.45
Power Saw Operators (2 H.P. and over).....\$	31.70	16.42

CARP0745-002 09/01/2003

	Rates	Fringes
Drywall Hanger.....\$	31.80	16.39
Lather.....\$	31.80	16.39

ELEC1186-001 02/15/2004

	Rates	Fringes
Electricians:		
Cable Splicers.....	\$ 36.14	7.24+30.6%
Electricians.....	\$ 32.85	7.24+30.6%
Technicians.....	\$ 33.84	7.24+30.6%

ELEC1186-002 02/15/2004

	Rates	Fringes
Line Construction:		
Cable Splicers.....	\$ 36.14	7.24+30.6%
Groundmen/Truck Drivers.....	\$ 24.64	7.24+30.6%
Groundmen; Truck Drivers....	\$ 24.34	7.01+30.6%
Heavy Equipment Operators...	\$ 29.57	7.24+30.6%
Linemen.....	\$ 32.85	7.24+30.6%
Technicians.....	\$ 33.84	7.24+30.6%

ELEV0126-001 10/04/1999

	Rates	Fringes
Elevator Mechanic.....	\$ 34.65	6.935+a+b

a. VACATION: Employer contributes 8% of basic hourly rate for 5 years service and 6% of basic hourly rate for 6 months to 5 years service as vacation pay credit.

b. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving Day and Christmas Day.

ENGI0003-002 09/01/2003

	Rates	Fringes
Diver (Aqua Lung) (Scuba)		
Diver (Aqua Lung) (Scuba) (over a depth of 30 feet)...	\$ 52.90	17.38
Diver (Aqua Lung) (Scuba) (up to a depth of 30 feet)..	\$ 43.53	17.38
Stand-by Diver (Aqua Lung) (Scuba).....	\$ 34.15	17.38
Diver (Other than Aqua Lung)		
Diver (Other than Aqua Lung)	\$ 52.90	17.38
Diver Tender (Other than Aqua Lung).....	\$ 31.12	17.38
Stand-by Diver (Other than Aqua Lung).....	\$ 34.15	17.38
Helicopter Work		
Airborne Hoist Operator for Helicopter.....	\$ 32.70	17.38
Co-Pilot of Helicopter.....	\$ 32.84	17.38
Pilot of Helicopter.....	\$ 33.01	17.38
Power equipment operators: (Includes All Types of Paving)		
GROUP 1.....	\$ 28.84	17.38

GROUP 2.....	\$ 28.95	17.38
GROUP 3.....	\$ 29.12	17.38
GROUP 4.....	\$ 29.39	17.38
GROUP 5.....	\$ 29.70	17.38
GROUP 6.....	\$ 30.35	17.38
GROUP 7.....	\$ 30.67	17.38
GROUP 8.....	\$ 30.78	17.38
GROUP 9.....	\$ 30.89	17.38
GROUP 9A.....	\$ 31.12	17.38
GROUP 10.....	\$ 31.18	17.38
GROUP 10A.....	\$ 31.33	17.38
GROUP 11.....	\$ 31.48	17.38
GROUP 12.....	\$ 31.84	17.38
GROUP 12A.....	\$ 32.20	17.38
Wage Rates for Tunnel Work:		
GROUP 1.....	\$ 29.14	17.38
GROUP 2.....	\$ 29.25	17.38
GROUP 3.....	\$ 29.42	17.38
GROUP 4.....	\$ 29.69	17.38
GROUP 5.....	\$ 30.00	17.38
GROUP 6.....	\$ 30.65	17.38
GROUP 7.....	\$ 30.97	17.38
GROUP 8.....	\$ 31.08	17.38
GROUP 9.....	\$ 31.19	17.38
GROUP 9A.....	\$ 31.42	17.38
GROUP 10.....	\$ 31.48	17.38
GROUP 10A.....	\$ 31.63	17.38
GROUP 11.....	\$ 31.78	17.38
GROUP 12.....	\$ 32.14	17.38
GROUP 12A.....	\$ 32.50	17.38

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Fork Lift (up to and including 10 tons); Partsman (heavy duty repair shop parts room when needed).

GROUP 2: Conveyor Operator (Handling building material); Hydraulic Monitor; Mixer Box Operator (Concrete Plant).

GROUP 3: Brakeman; Deckhand; Fireman; Oiler; Oiler/Gradechecker; Signalman; Switchman; Highline Cableway Signalman; Bargeman; Bunkerman; Concrete Curing Machine (self-propelled, automatically applied unit on streets, highways, airports and canals); Leveeman; Roller (5 tons and under); Tugger Hoist.

GROUP 4: Boom Truck or dual purpose "A" Frame Truck (5 tons or less); Concrete Placing Boom (Building Construction); Dinky Operator; Elevator Operator; Hoist and/or Winch (one drum); Straddle Truck (Ross Carrier, Hyster and similar).

GROUP 5: Asphalt Plant Fireman; Compressors, Pumps, Generators and Welding Machines ("Bank" of 9 or more, individually or collectively); Concrete Pumps or Pumpcrete Guns; Lubrication and Service Engineer (Grease Rack); Screedman.

GROUP 6: Boom Truck or Dual Purpose "A"Frame Truck (over 5 tons); Combination Loader/Backhoe (up to and including 3/4 cu. yd.); Concrete Batch Plants (wet or dry); Concrete

Cutter, Groover and/or Grinder (self-propelled unit on streets, highways, airports, and canals); Conveyor or Concrete Pump (Truck or Equipment Mounted); Drilling Machinery (not to apply to waterliners, wagon drills or jack hammers); Fork Lift (over 10 tons); Loader (up to and including 3 and 1/2 cu. yds); Lull High Lift (under 40 feet); Lubrication and Service Engineer (Mobile); Maginnis Internal Full Slab Vibrator (on airports, highways, canals and warehouses); Man or Material Hoist; Mechanical Concrete Finisher (Large Clary, Johnson Bidwell, Bridge Deck and similar); Mobile Truck Crane Driver; Portable Shotblast Concrete Cleaning Machine; Portable Boring Machine (under streets, highways, etc.); Portable Crusher; Power Jumbo Operator (setting slip forms, etc., in tunnels); Rollers (over 5 tons); Self-propelled Compactor (single engine); Self-propelled Pavement Breaker; Skidsteer Loader with attachments; Slip Form Pumps (Power driven by hydraulic, electric, air, gas, etc., lifting device for concrete forms); Small Rubber Tired Tractors; Trencher (up to and including 6 feet); Underbridge Personnel Aerial Platform (50 feet of platform or less).

GROUP 7: Crusher Plant Engineer, Dozer (D-4, Case 450, John Deere 450, and similar); Dual Drum Mixer, Extend Lift; Hoist and/or Winch (2 drums); Loader (over 3 and 1/2 cu. yds. up to and including 6 yards.); Mechanical Finisher or Spreader Machine (asphalt), (Barber Greene and similar) (Screedman required); Mine or Shaft Hoist; Mobile Concrete Mixer (over 5 tons); Pipe Bending Machine (pipelines only); Pipe Cleaning Machine (tractor propelled and supported); Pipe Wrapping Machine (tractor propelled and supported); Roller Operator (Asphalt); Self-Propelled Elevating Grade Plane; Slusher Operator; Tractor (with boom) (D-6, or similar); Trencher (over 6 feet and less than 200 h.p.); Water Tanker (pulled by Euclids, T-Pulls, DW-10, 20 or 21, or similar); Winchman (Stern Winch on Dredge).

GROUP 8: Asphalt Plant Operator; Barge Mate (Seagoing); Cast-in-Place Pipe Laying Machine; Concrete Batch Plant (multiple units); Conveyor Operator (tunnel); Deckmate; Dozer (D-6 and similar); Finishing Machine Operator (airports and highways); Gradesetter; Kolman Loader (and similar); Mucking Machine (Crawler-type); Mucking Machine (Conveyor-type); No-Joint Pipe Laying Machine; Portable Crushing and Screening Plant; Power Blade Operator (under 12); Saurman Type Dragline (up to and including 5 yds.); Stationary Pipe Wrapping, Cleaning and Bending Machine; Surface Heater and Planer Operator, Tractor (D-6 and similar); Tri-Batch Paver; Tunnel Badger; Tunnel Mole and/or Boring Machine Operator Underbridge Personnel Aerial Platform (over 50 feet of platform).

GROUP 9: Combination Mixer and Compressor (gunite); Do-Mor Loader and Adams Elegrader; Dozer (D-7 or equal); Wheel and/or Ladder Trencher (over 6 feet and 200 to 749 h.p.).

GROUP 9A: Dozer (D-8 and similar); Gradesetter (when required by the Contractor to work from drawings, plans or specifications without the direct supervision of a foreman or superintendent); Push Cat; Scrapers (up to and including

20 cu. yds); Self-propelled Compactor with Dozer;
Self-Propelled, Rubber-Tired Earthmoving Equipment (up to
and including 20 cu. yds) (621 Band and similar); Sheep's
Foot; Tractor (D-8 and similar); Tractors with boom (larger
than D-6, and similar).

GROUP 10: Chicago Boom; Cold Planers; Heavy Duty Repairman or
Welder; Hoist and/or Winch (3 drums); Hydraulic Skooper
(Koehring and similar); Loader (over 6 cu. yds. up to and
including 12 cu. yds.); Saurman type Dragline (over 5 cu.
yds.); Self-propelled, rubber-tired Earthmoving Equipment
(over 20 cu. yds. up to and including 31 cu. yds.) (637D
and similar); Soil Stabilizer (P & H or equal); Sub-Grader
(Gurries or other automatic type); Tractors (D-9 or
equivalent, all attachments); Tractor (Tandem Scraper);
Watch Engineer.

GROUP 10A: Boat Operator; Cable-operated Crawler Crane (up to
and including 25 tons); Cable-operated Power Shovel,
Clamshell, Dragline and Backhoe (up to and including 1 cu.
yd.); Dozer D9-L; Dozer (D-10, HD41 and similar) (all
attachments); Gradall (up to and including 1 cu. yd.);
Hydraulic Backhoe (over 3/4 cu. yds. up to and including 2
cu. yds.); Mobile Truck Crane Operator (up to and including
25 tons) (Mobile Truck Crane Driver Required);
Self-propelled Boom Type Lifting Device (Center Mount) (up
to and including 25 tons) (Grove, Drott, P&H, Pettibone and
similar; Trencher (over 6 feet and 750 h.p. or more); Watch
Engineer (steam or electric).

GROUP 11: Automatic Slip Form Paver (concrete or asphalt);
Band Wagon (in conjunction with Wheel Excavator);
Cable-operated Crawler Cranes (over 25 tons but less than
50 tons); Cable-operated Power Shovel, Clamshell, Dragline
and Backhoe (over 1 cu. yd. up to 7 cu. yds.); Gradall
(over 1 cu. yds. up to 7 cu. yds.); DW-10, 20, etc.
(Tandem); Earthmoving Machines (multiple propulsion power
units and 2 or more Scrapers) (up to and including 35 cu.
yds., "struck" m.r.c.); Highline Cableway; Hydraulic
Backhoe (over 2 cu. yds. up to and including 4 cu. yds.);
Leverman; Lift Slab Machine; Loader (over 12 cu. yds);
Master Boat Operator; Mobile Truck Crane Operator (over 25
tons but less than 50 tons); (Mobile Truck Crane Driver
required); Pre-stress Wire Wrapping Machine; Self-propelled
Boom-type Lifting Device (Center Mount) (over 25 tons
m.r.c); Self-propelled Compactor (with multiple-propulsion
power units); Single Engine Rubber Tired Earthmoving
Machine (with Tandem Scraper); Tandem Cats; Trencher
(pulling attached shield).

GROUP 12: Clamshell or Dipper Operator; Derricks; Drill Rigs;
Multi-Propulsion Earthmoving Machines (2 or more Scrapers)
(over 35 cu. yds "struck"m.r.c.); Operators (Derricks,
Piledrivers and Cranes); Power Shovels and Draglines (7 cu.
yds. m.r.c. and over); Self-propelled rubber-tired
Earthmoving equipment (over 31 cu. yds.) (657B and
similar); Wheel Excavator (up to and including 750 cu. yds.
per hour); Wheel Excavator (over 750 cu. yds. per hour).

GROUP 12A: Dozer (D-11 or similar or larger); Hydraulic

Excavators (over 4 cu. yds.); Lifting cranes (50 tons and over); Pioneering Dozer/Backhoe (initial clearing and excavation for the purpose of providing access for other equipment where the terrain worked involves 1-to-1 slopes that are 50 feet in height or depth, the scope of this work does not include normal clearing and grubbing on usual hilly terrain nor the excavation work once the access is provided); Power Blade Operator (Cat 12 or equivalent or over); Straddle Lifts (over 50 tons); Tower Crane, Mobile; Traveling Truss Cranes; Universal, Liebherr, Linden, and similar types of Tower Cranes (in the erection, dismantling, and moving of equipment there shall be an additional Operating Engineer or Heavy Duty Repairman); Yo-Yo Cat or Dozer.

BOOMS AND/OR LEADS (HOURLY PREMIUMS):

The Operator of a crane (under 50 tons) with a boom of 80 feet or more (including jib), or of a crane (under 50 tons) with leads of 100 feet or more, shall receive a per hour premium for each hour worked on said crane (under 50 tons) in accordance with the following schedule:

Booms of 80 feet up to but not including 130 feet or Leads of 100 feet up to but not including 130 feet	0.50
Booms and/or Leads of 130 feet up to but not including 180 feet	0.75
Booms and/or Leads of 180 feet up to and including 250 feet	1.15
Booms and/or Leads over 250 feet	1.50

The Operator of a crane (50 tons and over) with a boom of 180 feet or more (including jib) shall receive a per hour premium for each hour worked on said crane (50 tons and over) in accordance with the following schedule:

Booms of 180 feet up to and including 250 feet	1.25
Booms over 250 feet	1.75

 ENGI0003-003 09/15/2003

	Rates	Fringes
Truck Driver		
GROUP 1.....	\$ 29.12	17.38+a
GROUP 2.....	\$ 29.39	17.38+a
GROUP 3.....	\$ 29.70	17.38+a
GROUP 4.....	\$ 30.35	17.38+a
GROUP 5.....	\$ 30.67	17.38+a
GROUP 6.....	\$ 30.78	17.38+a

TRUCK DRIVERS CLASSIFICATIONS

- GROUP 1: Utility, flatbed, or similar.
- GROUP 2: Dump, 8 yards, and under (water level); water truck, up to and including 2,000 gallons.
- GROUP 3: Tandem Dump, over 8 yards (water level); water

truck (over 2,000 gallons).
 GROUP 4: Semi-trailer, rock cans, or semi-dump.
 GROUP 5: Slip-in or pup.
 GROUP 6: End dumps (unlicensed); tractor trailer (hauling equipment).

a. An employee who has completed 1 but less than 2 years service-1 week's paid vacation; 2 but less than 10 years service - 2 weeks paid vacation; 10 but less than 15 years service - 3 weeks paid vacation; and 15 or more years service - 4 weeks paid vacation.

 ENGI0003-004 09/01/2003

	Rates	Fringes
Dredging: (Boat Operators)		
Boat Deckhand.....	\$ 29.12	17.38
Boat Operator.....	\$ 31.33	17.38
Clamshell or Dipper Dredges:\$	31.59	16.53
Hydraulic Suction Dredges:..\$	30.93	16.53
Master Boat Operator.....	\$ 31.48	17.38
Dredging: (Clamshell or Dipper Dredging)		
GROUP 1.....	\$ 31.84	17.38
GROUP 2.....	\$ 31.18	17.38
GROUP 3.....	\$ 30.78	17.38
GROUP 4.....	\$ 29.12	17.38
Dredging: (Derricks)		
GROUP 1.....	\$ 31.84	17.38
GROUP 2.....	\$ 31.18	17.38
GROUP 3.....	\$ 30.78	17.38
GROUP 4.....	\$ 29.12	17.38
Dredging: (Hydraulic Suction Dredges)		
GROUP 1.....	\$ 31.48	17.38
GROUP 2.....	\$ 31.33	17.38
GROUP 3.....	\$ 31.18	17.38
GROUP 4.....	\$ 31.12	17.38
GROUP 5.....	\$ 30.78	17.38
GROUP 6.....	\$ 30.67	17.38
GROUP 7.....	\$ 29.12	17.38

CLAMSHELL OR DIPPER DREDGING CLASSIFICATIONS

GROUP 1: Clamshell or Dipper Operator.
 GROUP 2: Mechanic or Welder; Watch Engineer.
 GROUP 3: Barge Mate; Deckmate.
 GROUP 4: Bargeman; Deckhand; Fireman; Oiler.

HYDRAULIC SUCTION DREDGING CLASSIFICATIONS

GROUP 1: Leverman.
 GROUP 2: Watch Engineer (steam or electric).
 GROUP 3: Mechanic or Welder.
 GROUP 4: Dozer Operator.
 GROUP 5: Deckmate.
 GROUP 6: Winchman (Stern Winch on Dredge).
 GROUP 7: Deckhand (can operate anchor scow under direction

of Deckmate); Fireman; Leveeman; Oiler.

DERRICK CLASSIFICATIONS

- GROUP 1: Operators (Derricks, Piledrivers and Cranes).
- GROUP 2: Saurman Type Dragline (over 5 cubic yards).
- GROUP 3: Deckmate; Saurman Type Dragline (up to and including 5 yards).
- GROUP 4: Deckhand, Fireman, Oiler.

 IRON0625-001 09/01/2003

	Rates	Fringes
Ironworker.....	\$ 28.00	21.36
a. Employees will be paid \$.50 per hour more while working in tunnels and coffer dams; \$1.00 per hour more when required to work under or are covered with water (submerged) and when they are required to work on the summit of Mauna Kea, Mauna Loa or Haleakala.		

 LABO0368-001 09/03/2002

	Rates	Fringes
Laborer		
GROUP 1.....	\$ 23.25	12.35
GROUP 2.....	\$ 21.50	12.35
GROUP 3.....	\$ 24.25	12.35
GROUP 4.....	\$ 23.75	12.35
GROUP 5.....	\$ 22.75	12.35
GROUP 6.....	\$ 15.50	8.10

LABORERS CLASSIFICATIONS

GROUP 1: Asbestos Removal Worker (EPA certified workers); Asphalt Ironer, Raker, Luteman, and Handroller, and all types of Asphalt Spreader Boxes; Asphalt Shoveler; Assembly and Installation of Multiplates, Liner Plates, Rings, Mesh, Mats; Batching Plant (portable and temporary); Boring Machine Operator (under streets and sidewalks); Buggymobile; Burning, Welding, Signalling, Choke Setting, and Rigging in connection with Laborers' work (except demolition); Chainsaw, Faller, Logloader, and Bucker; Compactors (Jackson and similar); Concrete Bucket Dumpman; Concrete Chipping; Concrete Chuteman/Hoseman (pouring concrete) (the handling of the chute from ready-mix trucks for such jobs as walls, slabs, decks, floors, foundations, footings, curbs, gutters, and sidewalks); Concrete Core Cutter (Walls, Floors, and Ceiling); Concrete Curer (impervious membrane and form oiler); Concrete Grinding or Sanding; Concrete: Hooking on, signaling, dumping of concrete for treme work over water on caissons, pilings, abutments, etc.; Concrete: Mixing, handling, conveying, pouring, vibrating, otherwise placing of concrete or aggregates or by any other process; Concrete: Operation of motorized wheelbarrows or buggies or machines of similar character, whether run by gas, diesel, or electric power; Concrete Pump Machine (laying, coupling, uncoupling of all connections and cleaning of equipment); Concrete and/or

Asphalt Saw (Walking or Handtype) (cutting walls or flatwork) (scoring old or new concrete and/or asphalt) (cutting for expansion joints) (streets and ways for laying of pipe, cable or conduit for all purposes); Concrete Shovelers/Laborers (Wet or Dry); Concrete Screeding for Rough Strike-Off; Rodding or striking-off, by hand or mechanical means prior to finishing; Concrete Vibrator Operator; Coring Holes: Walls, footings, piers or other obstructions for passage of pipes or conduits for any purpose and the pouring of concrete to secure the hole; Curbing, Concreting, and Asphalt; Curing of Concrete, mortar, and other materials by any mode or method; Cut Granite Curb Setter (setting, leveling and grouting of all precast concrete or stone curbs); Cutting and Burning Torch (demolition); Dri Pak-It Machine; Driller (Track, Diamond Core, and Wagon); Driller (Joydrill Model TWM-2A, Gardner Denver DH-143 and similar type drills); Driller (Mechanical) (not covered elsewhere) (including multiple unit); (Ingersoll-Rand DM45E/DM50E/LM-100/LM-600C, Gardner-Denver SCH2500/SCH3500BV, Furukawa HCR-C300, Tamrock Drilltech CHA800/DHH 850 Tamrock Commando) (similar and replacement equipment thereof); Drilling for blasting; Operation of all rock and concrete drills and Jack Hammers, including handling, carrying, laying out of hose; (Ingersoll-Rand DM45E/DM50E/LM-100/LM-600C), Gardner-Denver SCH2500/SCH3500 BV, Furukawa HCR-C300, Tamrock Drilltech CHA 800/DHH 850/Tamrock Commando) (similar and replacement equipment thereof); Drilling (Mechanical) on the site or along the right-of-way as well as access roads, reservoirs, including areas adjacent or pertinent to construction sites); Falling, bucking, yarding, loading or burning of all trees or timber on construction site; Fence and/or Guardrail Erector; Forklift (9 ft. and under); Grating and Grill work for drains or other purposes; Green Cutter of concrete or aggregate in any form, by hand, mechanical means, grindstone or air and/or water; Grout: Spreading for any purpose; Guinea Chaser (Grade Checker) for general utility trenches, sitework, and excavation; Headerboard Man (Asphalt or Concrete); Heat Welder of Plastic (Laborers' AGC certified workers) (when work involves waterproofing for waterpools, artificial lakes and reservoir, or heat welding for sewer pipes); Heavy Highway Laborer (Rigging, signaling, handling, and installation of pre-cast catch basins, manholes, curbs and gutters); High Pressure Nozzleman - Hydraulic Monitor (over 100# pressure); Installation of Gilsulate 500XR; Jackhammer Operator; Jacking of slip forms; All semi and unskilled work connected therewithin; Laying of all multi-cell conduit or multi-purpose pipe; Magnesite and Mastic Workers (Wet or Dry)(including mixer operator); Mason Tender, Mortar Man; Mortar Mixer (Block, Brick, Masonry, and Plastering); Nozzleman (Sandblasting and/or Water Blasting); Operation, Manual or Hydraulic jacking of shields and the use of such other mechanical equipment as may be necessary; Pavement Breakers; Paving, curbing and surfacing of streets, ways, courts, under and overpasses, bridges, approaches, slope walls, and all other labor connected therewith; Pilecutters; Pipe Accessment in place, bolting and lining up of sectional metal or other pipe including corrugated pipe; Pipelayer performing all services in the laying and

installation of pipe from the point of receiving pipe in the ditch until completion of operation, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit, and any other stationary-type of tubular device used for conveying of any substance or element, whether water, sewage, solid, gas, air, or other product whatsoever and without regard to the nature of material from which tubular material is fabricated; No-joint pipe and stripping of same, Pipewrapper, Caulker, Bander, Kettlemen, and men applying asphalt, Laykold, treating Creosote and similar-type materials (6-inch pipe and over); Piping: resurfacing and paving of all ditches in preparation for laying of all pipes; Pipe laying of lateral sewer pipe from main or side sewer to buildings or structure (except Contactor may direct work be done under proper supervision); Pipe laying, leveling and marking of the joint used for main or side sewers and storm sewers; Laying of all clay, terra cotta, ironstone, vitrified concrete or other pipe for drainage; Placing and setting of water mains, gas mains and all pipe including removal of skids; Plaster Mortar Mixer/Pump; Pneumatic Impact Wrench; Portable Sawmill Operation: Choker setters, off bearers, and lumber handlers connected with clearing; Posthole Digger (Hand Held, Gas, Air and Electric); Power Broom Sweepers (Small); Preparation and Compaction of roadbeds for railroad track laying, highway construction, and the preparation of trenches, footings, etc., for cross-country transmission by pipelines, electrical transmission or underground lines or cables (by mechanical means); Raising of structure by manual or hydraulic jacks or other methods and resetting of structure in new locations, including all concrete work; Ramming or compaction; Riprap, Stonepaver, and Rock Slinger (includes placement of stacked concrete, wet or dry and loading, unloading, signaling, slinging and setting of other similar materials); Rotary Scarifier (including multiple head concrete chipping Scarifier); Salamander Heater, Drying of plaster, concrete mortar and other aggregate; Sandblaster (Nozzleman) handling, placing and operation of nozzle; Scaffold Erector; Scaffolds: (Swing and hanging) including maintenance thereof; Scaler; Septic Tank/Cesspool and Drain Fields Digger and Installer; Shredder/Chipper (tree branches, brush, etc.); Stripping and Setting Forms; Stripping of Forms: Other than panel forms which are to be re-used in their original form, and stripping of forms on all flat arch work; Tampers (Barko, Wacker, and similar type); Tank Scaler and Cleaners; Tarman; Tree Climbers and Trimmers; Trencher (includes hand-held, Davis T-66 and similar type); Trucks (flatbed up to and including 2 1/2 tons when used in connection with on-site Laborers' work; Trucks (Refuse and Garbage Disposal) (from job site to dump); Vibra-Screed (Bull Float in connection with Laborers' work); Well Points, Installation of or any other dewatering system.

GROUP 2: Air Blasting; Appliance Handling (job site) (after delivery and unloading in storage area); Asphalt Laborer; Asphalt Plant Laborer; Backfill work connected with the installation of Gilsulate 500XR; Backfilling, Grading and all other labor connected therewith; Boring Machine; Bridge Laborer; Burning of all debris (crates, boxes, packaging

waste materials); Cemetary Laborers; Chainman, Rodmen, and Grade Markers; Cleaning and Clearing of all debris; Cleaning, clearing, grading and/or removal for streets, highways, roadways, aprons, runways, sidewalks, parking areas, airports, approaches, and other similar installations; Cleaning or reconditioning of streets, ways, sewers and waterlines, all maintenance work and work of an unskilled and semi-skilled nature; Cleanup of Grounds and Buildings (other than "Light Clean-Up") (Janitorial Laborer); Clean-up of right-of-way; Clearing and slashing of brush or trees by hand or mechanical cutting; Concrete Bucket Tender (Groundman) hooking and unhooking of bucket; Concrete Forms; moving, cleaning, oiling and carrying to the next point of erection of all forms; Concrete Products Plant Laborers; Conveyor Tender (conveying of building materials); Cribbers, Shorer, Lagging, Sheeting, and Trench Jacking and Bracing, Hand-Guided Lagging Hammer Whaling Bracing; Crushed Stone Yards and Gravel and Sand Pit Laborers and all other similar plants; Demolition, Wrecking and Salvage Laborers: Wrecking and dismantling of buildings and all structures, with use of cutting or wrecking tools, burning or cutting, breaking away, cleaning and removal of all masonry, wood or metal fixtures for salvage or scrap, All hooking, unhooking, signaling of materials for salvage or scrap removed by crane or derrick; Digging under streets, roadways, aprons or other paved surfaces; Driller, Chuck Tender, Outside Nipper; Dry-packing of concrete (plugging and filling of she-bolt holes); Excavation, Preparation of street ways and bridges; Fence and/or Guardrail Erector; Dismantling and/or re-installation of all fence; Finegrader; Firewatcher; Flagman (Coning, preparing, stablishing and removing portable roadway barricade devices); Signal Men on all construction work defined herein, including Traffic Control Signal Men at construction site; Garbage and Debris Handlers and Cleaners; Gas, Pneumatic, and Electric Tools, not listed Group 1 (except Rototiller); General Clean-up: sweeping, cleaning, washdown, wiping of construction facility, and equipment (other than "Light Clean-up" [Janitorial] Laborer); General Excavation and Grading (all labor connected therewith); Digging of trenches, ditches and manholes and the leveling, grading and other preparation prior to laying pipe or conduit for any purpose; Excavations and foundations for buildings, piers, foundations and holes, and all other construction; General Laborer; Guniting Operator; Junk Yard Laborers (same as Salvage Yard); Landscape Nursery Laborers; Laser Beam "Target Man" in connection with Laborers' work; Layout Person for Plastic (when work involves waterproofing for waterponds, artificial lakes and reservoirs); Limbers, Brush Loaders, and Pilers; Loading, Unloading, carrying, distributing and handling of all rods and material for use in reinforcing concrete construction (except when a derrick or outrigger operated by other than hand power is used); Loading, unloading, sorting, stockpiling, handling and distribution of water mains, gas mains and all pipes; Loading and unloading of all materials, fixtures, furnishings and appliances from point of delivery to stockpile to point of installation; hooking and signalling from truck, conveyance or stockpile; Material Yard

Laborers; Parks and Sports arenas and all recreational center employees; Pipelayer Tender; Pipewrapper, Caulker, Bander, Kettlemen, and men applying asphalt, Laykold, Creosote, and similar-type materials (pipe under 6 inches); Plasterer Laborer (including Hod Carrier); Preparation, construction and maintenance of roadbeds and sub-grade for all paving, including excavation, dumping, and spreading of sub-grade material; Prestressed or precast concrete slabs, walls, or sections: all loading, unloading, stockpiling, hooking on of such slabs, walls or sections; Quarry Laborers; Railroad, Streetcar, and Rail Transit Maintenance and Repair; Removal of surplus material; Roustabout; Rubbish Trucks in connection with Building Construction Projects (excluding clearing, grubbing, and excavating); Salvage Yard: All work connected with cutting, cleaning, storing, stockpiling or handling of materials, all cleanup, removal of debris, burning, back-filling and landscaping of the site; Scaffolds: Erection, planking and removal of all scaffolds used for support for lathers, plasters, brick layers, masons, and other construction trades crafts; Scaffolds: (Specially designed by carpenters) laborers shall tend said carpenter on erection and dismantling thereof, preparation for foundation or mudsills, maintenance; Scraping of floors; Screeds: Handling of all screeds to be reused; handling, dismantling and conveyance of screeds; Setting, leveling and securing or bracing of metal or other road forms and expansion joints; Sheeting Piling/trench shoring (handling and placing of skip sheet or wood plank trench shoring); Ship Scalers; Shipwright; Sign Erector (subdivision traffic, regulatory, and street-name signs); Sloper; Slurry Seal Crews (Mixer Operator, Applicator, Squeegee Man, Shuttle Man, Top Man); Snapping of wall ties and removal of tie rods; Soil Test operations of semi and unskilled labor such as filling sand bags; Striper (Asphalt, Concrete or other Paved Surfaces); Tagging and Signaling of all building materials into high-rise units; Tool Room Attendant (Job Site); Traffic Delineating Device Applicator; Underpinning, lagging, bracing, propping and shoring, loading, signaling, right-of-way clearance along the route of movement, The clearance of new site, excavation of foundation when moving a house or structure from old site to new site; Utilities employees; Water Man; Waterscape/Hardscape Laborers; Wire Mesh Pulling (all concrete pouring operations); Wrecking, stripping, dismantling and handling concrete forms an false work.

GROUP 3: Licensed Powdermen.

GROUP 4: Gunnite Operator; High Scaler (working suspended), Pipelaying.

GROUP 5: Window Washer (Outside) (Working from bosun's chair and/or cable-suspended scaffold or work platform).

GROUP 6: Light Clean-Up.

* LABO0368-002 09/29/2003

Rates

Fringes

Landscape & Irrigation Laborers

Group 1.....	\$ 18.01	5.47
Group 2.....	\$ 18.51	5.47
Group 3.....	\$ 14.81	5.47

LABORERS CLASSIFICATIONS

GROUP 1: Installation of non-potable permanent or temporary irrigation water systems performed for the purposes of Landscaping and Irrigation architectural horticultural work; the installation of drinking fountains and permanent or temporary irrigation systems using potable water for Landscaping and Irrigation architectural horticultural purposes only. This work includes (a) the installation of all heads, risers, valves, valve boxes, vacuum breakers (pressure and non-pressure), low voltage electrical lines and, provided such work involves electrical wiring that will carry 24 volts or less, the installation of sensors, master control panels, display boards, junction boxes, conductors, including all other components for controllers, (b) and metallic (copper, brass, galvanized, or similar) pipe, as well as PVC or other plastic pipe including all work incidental thereto, i.e., unloading, handling and distribution of all pipes fittings, tools, materials and equipment, (c) all soldering work in connection with the above whether done by torch, soldering iron, or other means; (d) tie-in to main lines, thrust blocks (both precast and poured in place), pipe hangers and supports incidental to installation of the entire irrigation system, (e) making of pressure tests, start-up testing, flushing, purging, water balancing, placing into operation all irrigation equipment, fixtures and appurtenances installed under this agreement, and (f) the fabrication, replacement, repair and servicing of landscaping and irrigation systems. Operation of hand-held gas, air, electric, or self-powered tools and equipment used in the performance of Landscape and Irrigation work in connection with architectural horticulture; Choke-setting, signaling, and rigging for equipment operators on job-site in the performance of such Landscaping and Irrigation work; Concrete work (wet or dry) performed in connection with such Landscaping and Irrigation work. This work shall also include the setting of rock, stone, or riprap in connection with such Landscape, Waterscape, Rockscape, and Irrigation work; Grubbing, pick and shovel excavation, and hand rolling or tamping in connection with the performance of such Landscaping and Irrigation work; Sprigging, handseeding, and planting of trees, shrubs, ground covers, and other plantings and the performance of all types of gardening and horticultural work relating to said planting; Operation of flat bed trucks (up to and including 2 1/2 tons).

GROUP 2: Layout of irrigation and other non-potable irrigation water systems and the layout of drinking fountains and other potable irrigation water systems in connection with such Landscaping and Irrigation work. This includes the layout of all heads, risers, valves, valve boxes, vacuum breakers, low voltage electrical lines, hydraulic and electrical controllers, and metallic

(coppers, brass, galvanized, or similar) pipe, as well as PVC or other plastic pipe. This work also includes the reading and interpretation of plans and specifications in connection with the layout of Landscaping, Rockscape, Waterscape, and Irrigation work; Operation of Hydro-Mulching machines (sprayman and driver), Drillers, Trenchers (riding type, Davis T-66, and similar) and fork lifts used in connection with the performance of such Landscaping and Irrigation work; Tree climbers and chain saw tree trimmers, Sporadic operation (when used in connection with Landscaping, Rockscape, Waterscape, and Irrigation work) of Skid-Steer Loaders (Bobcat and similar), Cranes (Bantam, Grove, and similar), Hoptos, Backhoes, Loaders, Rollers, and Dozers (Case, John Deere, and similar), Water Trucks, Trucks requiring a State of Hawaii Public Utilities Commission Type 5 and/or type 7 license, sit-down type and "gang" mowers, and other self-propelled, sit-down operated machines not listed under Landscape & Irrigation Maintenance Laborer; Chemical spraying using self-propelled power spraying equipment (200 gallon capacity or more).

GROUP 3: Maintenance of trees, shrubs, ground covers, lawns and other planted areas, including the replanting of trees, shrubs, ground covers, and other plantings that did not "take" or which are damaged; provided, however, that re-planting that requires the use of equipment, machinery, or power tools shall be paid for at the rate of pay specified under Landscape and Irrigation Laborer, Group 1; Raking, mowing, trimming, and runing, including the use of "weed eaters", hedge trimmers, vacuums, blowers, and other hand-held gas, air, electric, or self-powered tools, and the operation of lawn mowers (Note: The operation of sit-down type and "gang" mowers shall be paid for at the rate of pay specified under Landscape & Irrigation Laborer, Group 2); Guywiring, staking, propping, and supporting trees; Fertilizing, Chemical spraying using spray equipment with less than 200 gallon capacity, Maintaining irrigation and sprinkler systems, including the staking, clamping, and adjustment of risers, and the adjustment and/or replacement of sprinkler heads, (Note: the cleaning and gluing of pipe and fittings shall be paid for at the rate of pay specified under Landscape & Irrigation Laborer(Group 1); Watering by hand or sprinkler system and the peformance of other types of gardening, yardman, and horticultural-related work.

 * LABO0368-003 09/03/2002

	Rates	Fringes
Underground Laborer		
GROUP 1.....	\$ 23.85	12.35
GROUP 2.....	\$ 25.35	12.35
GROUP 3.....	\$ 25.85	12.35
GROUP 4.....	\$ 26.85	12.35
GROUP 5.....	\$ 27.20	12.35
GROUP 6.....	\$ 27.45	12.35
GROUP 7.....	\$ 27.90	12.35

GROUP 1: Watchmen; Change House Attendant

GROUP 2: Swamper; Brakeman; Bull Gang-Muckers, Trackmen; Dumpmen (any method); Concrete Crew (includes rodding and spreading); Grout Crew; Reboundmen

GROUP 3: Chucktenders and Cabletenders; Powderman (Prime House); Vibratorman, Pavement Breakers

GROUP 4: Miners - Tunnel (including top and bottom man on shaft and raise work); Timberman, Retimberman (wood or steel or substitute materials thereof); Blasters, Drillers, Powderman (in heading); Headman; Cherry Pickerman (where car is lifted); Nipper; Grout Gunmen; Grout Pumpman & Potman; Gunite, Shotcrete Gunmen & Potmen; Concrete Finisher (in tunnel); Concrete Screed Man; Bit Grinder; Steel Form Raisers & Setters; High Pressure Nozzleman; Nozzleman (on slick line); Sandblaster-Potman (combination work assignment interchangeable); Tugger

GROUP 5: Shaft Work & Raise (below actual or excavated ground level); Diamond Driller; Gunite or Shotcrete Nozzleman

GROUP 6: Shifter

GROUP 7: Shifter (Shaft Work & Raiser)

 * PAIN1791-001 07/01/2004

	Rates	Fringes
Painters:		
Brush.....	\$ 26.55	21.60
Sandblaster; Spray.....	\$ 27.05	21.60

 * PAIN1889-001 07/01/2003

	Rates	Fringes
Glazier.....	\$ 24.93	19.10

 * PAIN1926-001 02/27/2004

	Rates	Fringes
Soft Floor Layer.....	\$ 23.65	17.05

 * PAIN1944-001 01/01/2004

	Rates	Fringes
Taper.....	\$ 34.00	13.05

 * PLAS0630-001 09/01/2003

	Rates	Fringes
Plasterer.....	\$ 27.64	17.47

 * PLAS0630-002 09/01/2003

	Rates	Fringes
Cement Masons:		
Cement Masons.....	\$ 26.80	17.47
Trowel Machine Operators....	\$ 26.95	17.47

* PLUM0675-001 01/04/2004

	Rates	Fringes
Plumber, Pipefitter, Steamfitter & Sprinkler Fitter.	\$ 30.65	17.05

* ROOF0221-001 04/28/2002

	Rates	Fringes
Roofer.....	\$ 28.10	12.83

* SHEE0293-001 09/01/2002

	Rates	Fringes
Sheet metal worker.....	\$ 33.47	14.12

* SUHI1997-001 09/15/1997

	Rates	Fringes
Drapery Installer.....	\$ 13.60	1.20

* SUHI1997-002 09/15/1997

	Rates	Fringes
Fence Erector-Chain Link Fence.	\$ 9.33	1.65

RIGGERS; WELDERS - Receive rate prescribed for craft performing operation to which rigging or welding is incidental.

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION

Section 00800 - Special Contract Requirements

52.231-5000 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE
MAR 1995)—EFARS

(a) This clause does not apply to terminations. See 52.249-5000, Basis for Settlement of Proposals and FAR Part 49.

(b) Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series equipment from the contractor's accounting records, costs for that equipment shall be based upon the applicable provisions of EP 1110-1-8, Construction Equipment Ownership and Operating Expense Schedule, Region X. 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 used or a rate 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 retroactive 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.

(End of clause)

52.249-5000 BASIS FOR SETTLEMENT OF PROPOSALS

Actual costs will be used to determine equipment costs for a settlement proposal submitted on the total cost basis under FAR 49.206-2(b). In evaluating a terminations settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

(a) 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.

(b) 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 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.

(Am-0005)

(End of Clause)

DB-11 DESIGN-BUILD CONTRACT - ORDER OF PRECEDENCE (AUG 1997)

a) The contract includes the standard contract clauses and schedules current at the time of award. It entails: (1) the solicitation in its entirety, including all drawings, cuts and illustrations, and any amendments and (2) the successful Offeror's accepted proposal. The contract constitutes and defines the entire agreement between the Contractor and the Government. No documentation shall be omitted which in any ways bears upon the terms of that agreement

b) In the event of conflict or inconsistency between any of the provisions of this contract, precedence shall be given in the following order:

(1) Betterments: Any portions of the accepted proposal which both conform to and exceed the provisions of the solicitation

(2) The provisions of the solicitation. (See also Contract Clause: SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION.)

(3) All other provisions of the accepted proposal

(4) Any design products, including but not limited to plans, specifications, engineering studies and analyses, shop drawings, equipment installation drawings, etc. These are "deliverables" under the contract and are not part of the contract itself. Design products must conform with all provisions of the contract, in the order of precedence herein.

~~DB-12 PROPOSED BETTERMENTS (AUG 1997)~~

~~(a) The minimum requirements of the contract are identified in the Request for Proposal. All betterments offered in the proposal become a requirement of the awarded contract.~~

~~(b) A "Betterment" is defined as any component or system, which exceeds the minimum requirements, stated in the Request for Proposal. This includes all proposed betterments listed in accordance with the "Proposal Submission Requirements" of the Solicitation, and all Government identified betterments.~~

~~(c) "Government identified betterments" include the betterments identified on the "List of Accepted Project Betterments" prepared by the Proposal Evaluation Board and made part of the contract by alteration, and all other betterments identified in the accepted Proposal after award.~~

DB-13 KEY PERSONNEL, SUBCONTRACTORS AND OUTSIDE ASSOCIATES OR CONSULTANTS (AUG 1997)

In connection with the services covered by this contract, any in-house personnel, subcontractors, and outside associates or consultants will be limited to the 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 designated in-house personnel, subcontractors, associates, or consultants.

(Am-0005)

DB-14 WARRANTY OF CONSTRUCTION WORK - AUG 1997

- (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 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, or workmanship.
- (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 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.

DB-15 SEQUENCE OF DESIGN-CONSTRUCTION (AUG 1997)

(a) After receipt of the Contract Notice to Proceed (NTP) the Contractor shall initiate design, comply with all design submission requirements as covered under Division 01 General Requirements, and obtain Government review of each submission. No construction may be started until the Government reviews the Final Design submission and determines it satisfactory for purposes of beginning construction. The ACO or COR will notify the Contractor when the design is cleared for construction. The Government will not grant any time extension for any design resubmittal required when, in the opinion of the ACO or COR, the initial submission failed to meet the minimum quality requirements as set forth in the Contract.

(b) If the Government allows the Contractor to proceed with limited construction based on pending minor revisions to the reviewed Final Design submission, no payment will be made for any in-place construction related to the pending revisions until they are completed, resubmitted and are satisfactory to the Government.

(c) No payment will be made for any in-place construction until all required submittals have been made, reviewed and are satisfactory to the Government.

DB-17 CONSTRUCTOR'S ROLE DURING DESIGN PROCESS (JUN 1998)

The Contractor's construction management key personnel shall be actively involved during the design process to effectively integrate the design and construction requirements of this contract. In addition to the typical required construction activities, the Contractor's involvement includes, but is not limited to actions such as: integrating the design schedule into the Master Schedule to maximize the effectiveness of fast-tracking design and construction (within the limits allowed in the contract), ensuring constructibility and economy of the design, integrating the shop drawing and installation drawing process into the design, executing the material and equipment acquisition programs to meet critical schedules, effectively interfacing the construction QC program with the design QC program, and maintaining and providing the design team with accurate, up-to-date redline and as-built documentation. The Contractor shall require and manage the active involvement of key trade subcontractors in the above activities.

DB-18 VALUE ENGINEERING AFTER AWARD (JUN 1999)

(a) In reference to Contract Clause 52.248-3, Value Engineering-Construction, the Government may refuse to entertain a "Value Engineering Change Proposal" (VECP) for those "performance oriented" aspects of the Solicitation documents which were addressed in the Contractor's accepted contract proposal and which were evaluated in competition with other offerors for award of this contract.

(b) The Government may consider a VECP for those "prescriptive" aspects of the Solicitation documents, not addressed in the Contractor's accepted contract proposal or addressed but evaluated only for minimum conformance with the Solicitation requirements.

(c) For purposes of this clause, the term "performance oriented" refers to those aspects of the design criteria or other contract requirements which allow the Offeror or Contractor certain latitude, choice of and flexibility to propose in its accepted contract offer a choice of design, technical approach, design solution, construction approach or other approach to fulfill the contract requirements. Such requirements generally tend to be expressed in terms of functions to be performed, performance required or essential

physical characteristics, without dictating a specific process or specific design solution for achieving the desired result.

(d) In contrast, for purposes of this clause, the term “prescriptive” refers to those aspects of the design criteria or other Solicitation requirements wherein the Government expressed the design solution or other requirements in terms of specific material, approaches, systems, and/or processes to be used. Prescriptive aspects typically allow the Offerors little or no freedom in the choice of design approach, materials, fabrication techniques, methods of installation, or any other approach to fulfill the contract requirements.

DB-19 DESIGN CONFERENCES (AUG 1997)

Pre-Work: As part of the Pre-work Conference conducted after contract award, key representatives of the Government and the Contractor will review the design submission and review procedures specified herein, discuss the preliminary design schedule and provisions for phase completion of the design build documents with construction activities (fast tracking), as appropriate, meet with Corps of Engineers Design Review personnel and key Using Agency points of contact and any other appropriate pre-design discussion items.

Initial Design Conference: After award of the contract, the Contractor shall visit the site and conduct extensive interviews, and problem solving discussions with the individual users, base personnel, Corps of Engineers personnel to acquire all necessary site information, review user operations, and discuss user needs. The Contractor shall document all discussions. The design shall be finalized as a direct result of these meetings.

Design Review Conferences: Review conferences will be held for each design for each submittal. The Contractor shall bring the personnel that developed the design submittal to the review conference.

DB-20 TRAINING (FEB 2000)

The Contractor shall provide operational and maintenance training for all systems furnished under this contract. The training will be for the operating and maintenance personnel. The training shall be done by the system manufacturer. The training shall not take place until the operation and maintenance manuals are submitted and approved. The Contractor shall videotape the training session on VHS tapes and provide the tapes to the Government.

DB-21 WARRANTY OF DESIGN (FIRM-FIXED PRICE DESIGN-BUILD CONTRACT) – MAY 2002

(a) The Contractor warrants that the design shall be performed in accordance with the Contract requirements. Design and design related construction not conforming to the Contract requirements shall be corrected at no additional cost to the Government. The standard of care for design is defined in paragraph (b) of Special Contract Requirement “RESPONSIBILITY OF THE CONTRACTOR FOR DESIGN”.

(b) The period of this warranty shall commence upon final completion and the Government’s acceptance of the work, or in the case of the Government’s beneficial occupancy of all or part of the work for its convenience, prior to final completion and acceptance, at the time of such occupancy.

(c) This design warranty shall be effective from the above event through the Statute of Limitations and Statute of Repose, as applicable to the state that the project is located in.

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

DB-22 DEVIATING FROM THE ACCEPTED DESIGN (JUN 2002)

(a.) The Contractor must obtain the approval of the Designer of Record and the Government's concurrence for any Contractor proposed revision to the professionally stamped and sealed and Government reviewed and concurred design, before proceeding with the revision.

(b.) The Government reserves the right to non-concur with any revision to the design, which may impact furniture, furnishings, equipment selections or operations decisions that were made, based on the reviewed and concurred design.

(c.) Any revision to the design, which deviates from the contract requirements (i.e., the RFP and the accepted proposal), will require a modification, pursuant to the Changes clause, in addition to Government concurrence. The Government reserves the right to disapprove such a revision.

(d.) Unless the Government initiates a change to the contract requirements, or the Government determines that the Government furnished design criteria are incorrect and must be revised, any Contractor initiated proposed change to the contract requirements, which results in additional cost, shall strictly be at the Contractor's expense.

(e.) The Contractor shall track all approved revisions to the reviewed and accepted design and shall incorporate them into the as-built design documentation, in accordance with agreed procedures. The Designer of Record shall document its professional concurrence on the as-builts for any revisions in the stamped and sealed drawings and specifications.

DB-23 RECOMMENDED INSURANCE COVERAGE - MAR 2002

The Design-Build Contractor's attention is invited to the contract requirements concerning "RESPONSIBILITY OF THE CONTRACTOR FOR DESIGN", "WARRANTY OF DESIGN" and "WARRANTY OF CONSTRUCTION WORK". These requirements vest in the Contractor complete responsibility for the professional quality, technical accuracy, and coordination of all design, drawings, specifications and other work or materials furnish by his in-house or consultant forces. The Design-Build Contractor must correct and revise any errors or deficiencies in his work, notwithstanding any review, approval, acceptance or payment by the Government. The Contractor must correct and change any work resulting from his defective design at no additional cost to the Government. The requirements further stipulate that the Design-Build Contractor shall be liable to the Government for the damages to the Government caused by negligent performance. Though not a mandatory requirement, this is to recommend that the Design-Build Contractor investigate and obtain appropriate insurance coverage for such liability protection.

DB-24 GOVERNMENT-FURNISHED RFP DRAWINGS, SURVEYS AND SPECIFICATIONS – JUL 2002

This is to clarify that contract clause 252.236-7001, “Contract Drawings and Specifications,” refers to any Government-furnished design or design criteria included in the Request for Proposal (RFP).

DB-4 RESPONSIBILITY OF THE CONTRACTOR FOR DESIGN (MAY 2002)

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other non-construction services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiency in its designs, drawings, specifications, and other non-construction services and perform any necessary rework or modifications, including any damage to real or personal property, resulting from the design error or omission.

(b) The standard of care for all design services performed under this agreement shall be the care and skill ordinarily used by members of the architectural or engineering professions practicing under similar conditions at the same time and locality. Notwithstanding the above, in the event that the contract specifies that portions of the Work be performed in accordance with a performance standard, the design services shall be performed so as to achieve such standards.

(c) 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. 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 these services furnished under this contract.

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

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

[End of Statement

**S-17.1 OPTION FOR INCREASED SCOPE -- SEPARATELY PRICED LINE ITEM
(APR 1996)**

The Government may require the construction of the numbered line item(s), identified in the bidding schedule as (an) option item(s), in the quantity and at the price stated. The Contracting Officer may exercise the option(s) at time of award or by written notice to the Contractor within Ninety (90) calendar days from time of award. Performance period(s) for the option(s) will be identified in the FAR clause entitled COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK, in Section 00700.

S-18 ASBESTOS --- (OCCUPATIONAL HEALTH AND ENVIRONMENTAL)

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

(b) The Contractor is advised that friable and/or nonfriable asbestos containing material has been identified in area(s) where contract work is to be performed. Friable asbestos containing material means any material that contains more than 1 percent asbestos by weight that hand pressure can crumble, pulverize or reduce to powder when dry. Nonfriable asbestos containing materials do not release asbestos fiber during routine handling and end-use. However, excessive fiber concentrations may be produced during uncontrolled abrading, sanding, drilling, cutting, machining, removal, demolition or other similar activities.

(c) Care must be taken to avoid releasing, or causing to be released, asbestos fibers into the atmosphere where they may be inhaled or ingested. The Occupational Safety and Health Administration (OSHA) has set standards at 29 CFR 1910.1001, for exposure to airborne concentrations of asbestos, fibers, methods of compliance, medical surveillance, housekeeping procedures and other measures that must be taken when working with or around asbestos containing materials which release airborne asbestos fibers at concentrations in excess of those established 29 CFR 1910.1001. 29 CFR 1910.1001 has been identified as applicable to construction (29 CFR 1926.55 gases, vapors, fumes, dusts and mists). The Environmental Protection Agency (EPA) has established standards at 40 CFR 61.140-156 for the control of asbestos emissions to the environment and the handling and disposal of asbestos wastes.

(d) When contract work activities are carried out in locations where the potential exists for exposure to airborne asbestos fibers as described in paragraph (b), or where asbestos waste will be generated, the Contractor shall assure that all measures necessary to provide effective protection to persons from exposure to asbestos fibers (and prevention of contamination to property, materials, supplies, equipment and the internal and external environment) are effectively instituted.

(e) As a minimum, the Contractor shall comply with the provisions of 29 CFR 1910.1001 and 1926.55; 49 CFR 72.101, 172.200-204, 172.316, 173.1090; 40 CFR 61.140-156; and any state implementing hazardous waste under the Resources Conservation and Recovery Act (RCRA) requirements and any other applicable federal, state or local requirements.

(f) In addition to the information required in Contract Clause, ACCIDENT PREVENTION, of this contract, the Contractor's Accident Prevention Plan must also fully address the following topics, and at the Contractor's option may include additional information as applicable.

(1) Medical Surveillance: (29 CFR 1910.1001(J)).

(2) Employee training: Prior to beginning work in asbestos containing material area(s) (29 CFR 1910.1001 and 29 CFR 1910.134).

(3) Respiratory protection: (29 CFR 1910.1001 and 29 CFR 1910.134)

- (4) Personal protective clothing and equipment: (29 CFR 1910.1001(d)). The use of compressed air to remove asbestos from workers' clothing is prohibited. The Contractor shall specify the type of change room, wash facilities and laundering facilities as applicable.
- (5) Airborne asbestos monitoring: 29 CFR 1910.1001(f)). Specify the monitoring and analytical procedures to be used before, during, and after completion of contract work in areas where asbestos containing materials are located. All asbestos monitoring shall be conducted under the guidance of an industrial hygienist certified by the American Board of Industrial Hygiene. Samples shall be analyzed by an American Industrial Hygiene Association (AIHA) accredited laboratory proficient in the analysis of asbestos and asbestos containing materials. Turn around time from end of sampling period to review of results of analyses by Contractor shall be no longer than 72 hours.
- (6) Housekeeping: (29 CFR 1910.1001(h)). Dry sweeping of contract work areas contaminated with asbestos containing material is prohibited. The Contractor shall specify methods and materials used to package asbestos containing waste and plan to control any incidental airborne release or spill of asbestos containing material.
- (7) Methods of compliance: (29 CFR 1910.1001(c)). Contractor shall include procedures relating to engineering controls, local exhaust ventilation, particular tools to be used and work practices (1910.1001(c)). Specify methods, materials and equipment to be used to prevent asbestos contamination to property, materials, supplies, equipment and the internal and external environment during maintenance, renovation or other contract activities. Local Exhaust ventilation equipment including power operated tools equipped with local exhaust ventilation shall conform with the Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems ANSI Z9.2 latest revised edition. Describe the type of high-efficiency filtered (HEPA) vacuum cleaners that shall be used to vacuum asbestos containing materials. Describe methods and materials to be used to assure all asbestos containing material will be thoroughly wetted by use of a wetting agent and water before removal and that airborne asbestos dust will be kept to a minimum.
- (8) Methods and materials to be used to decontaminate any property, materials, supplies, equipment and the environment if asbestos contamination results. (29 CFR 1910.1001(c)).
- (9) Recordkeeping procedures. (29 CFR 1910.1001(i) and 1910.20).
- (10) Specific description of packaging, marking and shipping conveyances to be used to transport asbestos containing waste from the generation point to a storage or disposal facility in compliance with Department of Transportation requirements. (49 CFR 172.101, 172.200-204, 176.316, 173.1090).
- (11) Emergency procedures that would be taken if an accident of spill of asbestos containing material occurs during the transport of asbestos containing waste. (40 CFR 61.20-25).
- (12) Methods and equipment used to off load and bury asbestos containing waste control airborne emissions at the burial site. (40 CFR 61.20-25).
- (g) The Contractor shall complete and return to the Contracting Officer within 15 working days after the completion of all airborne asbestos monitoring conducted under this contract, a 'Summarization of Airborne Asbestos Sampling Results' form (ENG Form 4921-R, Jan 86) provided by the Government. NOTE: This completed summarization form is to be used by the US Army Corps of Engineers for statistical information purposes and does not relieve the Contractor from his recordkeeping requirements as described in 29 CFR 1910.1001(i) and 1910.20.

(h) An industrial hygiene asbestos survey was conducted in the contract work area(s) to identify the presence of asbestos containing materials as described in paragraph (b) above. The data collected is contained in the ASBESTOS SURVEY REPORT found at the end of this section.

(i) The industrial hygiene asbestos survey described in paragraph (h) may not have identified all asbestos containing materials in the contract work area(s). When contract work area(s) appear to have asbestos containing material not identified in the ASBESTOS SURVEY REPORT, the Contractor shall conduct an asbestos survey to identify such material(s) in a manner similar to that described in the ASBESTOS SURVEY REPORT.

[End of Statement]

S-19 SAFETY STANDARDS

The successful offeror will be required to comply with Chapter 396 of the Hawaii Occupational Safety and Health Act (OSHA) standards and Title 12 Department of Labor and Industrial Relations, Subtitle 8 Division of Occupational Safety and Health, Part 2 General Industry Standards as well as with the Corps of Engineers Manual 385-1-1, Safety and Health Requirements Manual. [Title 29, CFR, Chap 18, Part 1910 (OSHA)]

[End of Statement]

S-19A U.S. ARMY CORPS OF ENGINEERS SAFETY AND HEALTH REQUIREMENTS MANUAL, EM 385-1-1 (AUG 2002)

This paragraph applies to contracts and purchase orders that require the contractor to comply with EM 385-1-1 (e.g., contracts that include the Accident Prevention clause at FAR 52.236-13 and/or other safety provisions.) EM 385-1-1 and its changes are available at the following web site:

http://www.hq.usace.army.mil/soh/hqusace_soh.htm

The Contractor shall be responsible for complying with the current edition and all changes posted on the web as of the effective date of this solicitation.

Per EM 385-1-1 (latest version) Contractors shall ensure timely accident reporting is strictly adhered to. PODR 265 will be completed within 24 hours of all accidents (excluding first aid injuries). ENG 3394 forms will be completed within 5 days of lost time accident and forwarded to the Contracting Officer or Contracting Officer Representative. All accidents will be reported through the Honolulu Engineer District Safety Office, (808)438-1316 within 24 hours of the incident.

[End of Statement]

S-23.1 EMERGENCY PLANNING COMMUNITY RIGHT TO KNOW ACT (EPCRA) EXTREMELY HAZARDOUS SUBSTANCES (EHS), CERCLA HAZARDOUS SUBSTANCES, AND OTHER OSHA HAZARDOUS CHEMICALS (MAY 2000)

This applies to any contractor utilizing EPCRA EHS, CERCLA hazardous substances, and other OSHA hazardous chemicals in performance of any work while on any US Army Garrison, Hawaii (USAG-HI)

installations. The EPCRA EHS are defined in EPA document EPA 550-B-98-017, Title III List of List, Consolidated List of Chemicals Subject to the Emergency Planning and Community Right to Know Act and Section 112(r) of the Clean Air Act Amended. Contractors are responsible for knowing which chemicals they may use or transport are contained on the list. For convenience, contractors may review a copy of the EPA document at the Directorate of Public Works (DPW) Environmental Department. To obtain a copy of the list, the document is also available at the U.S. Environmental Protection Agency (EPA) Web address <http://www.epa.gov/ceppo/p-gen.htm>. For contractors' information, the locations of these chemicals stored on USAG-HI installations are available upon request. To obtain the list of locations, forward request to the following E-mail address: takenakc@schofield-emhl.army.mil. Indicate name, company, contract awarded and description of contract. A data base of locations of chemicals will then be forwarded upon review and approval of request. Contractors working on USAG-HI installations are encouraged to review this database which will provide information where potentially hazardous chemicals are stored.

(1) Reporting. All spills of substances containing EPCRA EHS and CERCLA hazardous substances, and OSHA hazardous chemicals will be immediately reported to the Directorate of Public Works (DPW) Spill Response line at 656-1111 during normal working hours. After normal working hours or weekends/holidays, all spills will be reported to the DPW Work Order Desk at 656-1275. The Contracting Officer must be notified during the first business hour immediately after. All waste developed resulting from EPCRA EHS, CERCLA hazardous substances, and other OSHA hazardous chemicals being utilized will be immediately reported to the DPW Environmental Office, phone: 656-2878 x 1022 (Mr. Akasaki).

(2) All Contractors Utilizing Substances Containing EPCRA EHS, CERCLA hazardous substances, and other OSHA hazardous chemicals will perform the following prior to contract start.

(a) Review the Installation Spill Contingency Plan, the Installation Hazardous Waste Management Plan and the 40-hour Environmental Compliance Officer Course manual available at the DPW Environmental Department or at the Directorate of Contracting. Upon review, the contractor or designated responsible employee shall sign a certification statement that they have reviewed and understand the contents of these documents.

(b) Provide a list of all EPCRA EHS, CERCLA hazardous substances, and other OSHA hazardous chemicals projected to be utilized, the estimated quantities of each and the Material Safety Data Sheets to the DPW Environmental Department and also to building 6040 East Range for material bar-codes.

(c) Provide the name, phone number, and pager number of a company spill response point of contact. The point of contact must be trained in spill response.

(d) Provide a copy of an agreement with a hazardous materials spill response company in the event of a spill.

(e) Provide copies of training certificates on environmental training and spill response training.

(f) Appoint a primary and alternate Environmental Compliance Officer in writing.

(g) Develop a notification procedure in the event of a spill to include phone numbers of response personnel, support agencies, National Response Center, State Hazard Evaluation Emergency Response Office and Civil Defense.

(3) Annual Update. On an annual basis, but not later than 1 February of each year, provide DPW Environmental Department an updated list as referenced in (2)(b) above.

(4) Contractor Caused Spills or Waste Generated of Substances Containing EPCRA EHS, CERCLA Hazardous Substances, and OSHA Hazardous Chemicals.

(a) All spills caused by the contractor will be cleaned up under supervision of the contractor and a qualified hazardous materials spill response company, at no cost to the government, in accordance with all applicable laws and regulations and to the satisfaction of the DPW Environmental Department.

(b) Accomplish all spill notifications as required by the U.S. Environmental Protection Agency and State of Hawaii to the Hazard Evaluation Emergency Response Office, Local Emergency Response Commission and National Response Center.

(c) Pay for disposal cost of all contaminated materials to include but not limited to soil, sorbent materials, disposable equipment and other materials contaminated by the spill. Ensure all disposal is in accordance with all applicable laws and regulations at authorized disposal sites.

S-23.2 ASBESTOS PROHIBITION & CERTIFICATION (SEP 2000)

a. Materials or products containing more than one percent asbestos shall not be used in this project. The Contracting Officer, at any time prior to acceptance of the work, or during the period designated for warranty of the work, if any, may reject materials and products that contain asbestos in excess of one percent, and direct the removal of such materials and products from the jobsite, at the sole expense of the contractor, and without additional time granted for performance of the work. After completion of this contract, if asbestos (exceeding 1%) is discovered in the products or materials (excluding items permitted by the exception) installed by the contractor, the Government reserves the right to direct the Contractor to perform asbestos abatement and restoration work, as required, at the Contractors' sole cost. Asbestos abatement work (removal and disposal of asbestos-containing materials and products) shall be accomplished in accordance with currently applicable United States Government and State of Hawaii standards for such work.

"Exception: Where suitable asbestos-free (equal to or less than 1% asbestos) substitutes do not exist for a material or product, the contractor may use a material or product containing asbestos in excess of 1%, with the prior written approval of the Contracting Officer. The Contractor shall submit a written request for such substitution, accompanied by a certification from the manufacturer of the material or product that shall set forth, in specific detail, the amount of asbestos present in the material or product. When available, laboratory analysis of the material or product for asbestos content shall be included with the submittal."

b. The Government may conduct asbestos testing on suspected asbestos-containing materials and products excluding items permitted by the "Exception", and such testing will be conducted at the expense of the Government. However, wherever destructive testing is required, or a material or product must be utilized by the Government for testing, the Contractor, shall, at its own expense, repair or replace the material or product, or the item of work that has been disturbed by testing, if the test results confirm presence of asbestos exceeding 1%. In the event test results indicate 1% or less asbestos content or complete absence of asbestos, the Contractor shall restore the test site to its original condition and the cost of restoration work, as approved by the Contracting Officer, shall be borne by the Government.

c. As a minimum, the Contractor shall furnish manufacturer's certification for the items listed below, excluding items permitted by the "Exception", certifying that they are asbestos free or do not contain asbestos in excess of 1%, as applicable. However, when presence of asbestos is suspected in other products and materials used in this project, the Contractor shall be required to provide such certification for those additional items when so directed by the Contracting Officer. Asbestos certification shall be required for the items applicable to this project only.

1. Vinyl sheet/vinyl tile flooring, including accessories and adhesives
2. Insulation materials including facing
3. Gaskets for piping and duct work
4. Acoustical Tiles
5. Firestopping materials
6. Fireproofing materials
7. Special Coating, including factory applied coatings, on sheetmetal roofing and siding
8. Wallboard for all interior and exterior applications including joint compounds
9. Adhesives (other than Item 1) used in the project
10. Tape materials used in the project
11. Roofing and Siding, nonmetallic
12. Felt materials and cushion materials
13. Pre-mixed mortars, grouts, leveling compounds, fillers, and other cementitious materials
14. Caulking and sealing materials

d. All submittals shall be accompanied by a certification from the manufacturer of the material or product that the material or product is asbestos-free; or shall set forth, in specific detail, the amount of asbestos present in the material or product. Documentary evidence of laboratory analysis of the material or product for asbestos content, conducted by an independent testing laboratory accredited for asbestos analysis by either the American Industrial Hygiene Association (AIHA) or the National Voluntary Laboratory Accreditation Program (NVLAP) administered by the National Institute of Standards and Technology (NIST).

e. The Contractor shall implement asbestos awareness and require all subcontractors, vendors, and suppliers to furnish materials and products free of asbestos except where an exception is warranted. The Contractor shall require all subcontractors, vendors, and suppliers to provide manufacturers certifications and data to support the exception. The request for exception shall be provided in writing to the Contracting Officer 30 days prior to commencement of any field work related to that product for which the exception is sought for the project.

f. The Contractor shall monitor all subcontractors, vendors, and suppliers to ensure asbestos containing building materials are not used in the project except those permitted by the Exception.

g. Recording

(1) The Contractor shall annotate on the as-built drawings the location where asbestos containing building materials and products have been used. The annotation shall contain the material and quantity.

(2) Where projects are completed using no asbestos, the Contractor shall prepare and sign a Certification of Asbestos Free Facility. The certification shall contain the project name, contract number, date of certification, and Contractor's name. The certificate shall state that, to the best of Contractor's knowledge, the facility has been completed without the use of asbestos containing building materials and products. The certification shall be signed by the company president or principal or by an individual authorized to sign for the president or principal.

S-28.7 REQUIRED INSURANCE (Dec 1993)

(The following is applicable when work is performed on a government installation.)

The minimum insurance requirements, pursuant to Section 00700, Contract Clause, "INSURANCE - - WORK ON A GOVERNMENT INSTALLATION" of this contract, are:

Workers' Compensation and Employer's Liability Insurance - Minimum coverage of \$100,000.

Comprehensive General Liability Insurance - Minimum coverage of \$500,000 per occurrence.

Automobile Liability Insurance

(1) Bodily Injury: Minimum coverage of \$200,000 per person and \$500,000 per occurrence.

(2) Property Damage: Minimum coverage of \$20,000 per occurrence.

The Contractor shall insert the substance of this clause in subcontracts under this contract that require work on a Government installation. The Certificate Holder for Subcontractors' Certificates of Insurance shall be the U.S. Army Engineer District, Honolulu, Fort Shafter, Hawaii 96858-5440. [FAR 28.306 and 28.307-2]

[End of Statement]

S-28.8 PERFORMANCE AND PAYMENT BONDS (OCT 1995)

(Applicable to contracts exceeding \$100,000)

Within fourteen (14) calendar days after the date of contract award, the bidder to whom award is made shall furnish the Government with two bonds, each with good and sufficient surety or sureties acceptable

to the Government; namely, a Performance Bond (Standard Form 25) and a Payment Bond (Standard Form 25-A).

Any bonds furnished will be furnished by the Contractor to the Government prior to issuance of a Notice to Proceed by the Government. [FAR 28.102-3]

[End of Statement]

S-36.11 POSTERS AND NOTICES

Wage Rate, Equal Employment Opportunity, and Nondiscrimination in Employment Posters and Notices will be provided to the Contractor by the Contracting Officer. The Contractor shall mount these posters and notices, together with the wage determination decision, under weatherproof, transparent, protective covering, in one or more conspicuous places, as approved, and readily available to employees.

[End of Statement]

S-36.12 PROJECT SIGN

A project sign shall be fabricated and erected at a location designated by the Contracting Officer. The sign shall be constructed as shown on Drawing Nos. 40-21-01 and 40-21-06 copies of which are provided at the end of this section. The sign shall be erected as soon as possible and within 15 days after the date of notice to proceed. Upon completion of the project, the sign shall be removed and disposed of.

[End of Statement]

S-36.17 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE (AUG 1999)

Whenever a contract or modification of contract price is negotiated, the Contractor's cost proposals for equipment ownership and operating expenses shall be determined in accordance with the requirements of Special Contract Requirements statement, entitled "EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE," of this solicitation. EP 1110-1-8 "Construction Equipment Ownership and Operating Expense Schedule" is available at [http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep1110-1-8\(vol10\)/toc.htm](http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep1110-1-8(vol10)/toc.htm) for State of Hawaii (Region 10) and at [http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep1110-1-8\(vol12\)/toc.htm](http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep1110-1-8(vol12)/toc.htm) for Kwajalein Island, Roi-Namur Island, and Meck Island (Area 12), including Guam, American Samoa, and Johnston Island). [FAR 31.105(d)(2)(i) and EFARS 31.105(d)(2)(i)(b)].

[End of Statement]

S-36.20 PERFORMANCE OF WORK BY THE CONTRACTOR - DEFINED (NOV 1998)

(a) "Work," means physical work activities, involving any of the trades required to directly place the construction required by the contract. It also includes physical activities that directly support the work, such as: (1) warehousing; (2) maintenance of equipment; (3) procurement and transportation of supplies

or construction materials to the site for use by the contractor; (4) procuring, transporting and providing equipment for use by the contractor; (5) logistical activities that directly support the contractor's employees; and (6) similar activities. The meaning of the term does not include: (1) physical work performed by subcontractors; (2) procurement and transportation of supplies or construction materials to the site for use by subcontractors; (3) procuring, transporting and providing equipment for use by subcontractors; logistical activities undertaken by subcontractors for the benefit of contractor or subcontractor employees; (4) superintendence, quality control, clerical or similar activities; or (5) other activities of a similar nature.

Work will be quantified in terms of its monetary cost to the contractor, and will be compared to the total direct costs that the contractor incurs in performing the contract.

(b) "On the site" means the area within the construction limits depicted or described in the contract drawings or specifications. Activities such as transportation, maintenance and logistics that take place outside of the construction limits depicted or described are still "on the site," if in direct support of activities within the construction limits.

(c) "The contractor's own organization" means those individuals who are employed and paid by the contractor, whether full or part time. If a joint venture or partnership, members (and their paid employees) of the joint venture or partners are considered part of "the contractor's own organization." If a corporation, wholly-owned subsidiary elements of the corporation and their paid employees, are considered part of "the contractor's own organization." Any individual who is employed or paid, even on an occasional basis by an entity other than the contractor (such as a subcontractor), or any subcontractor or supplier to the contractor, is not considered part of "the contractor's own organization."

[End of Statement]

S-36.21 AVAILABILITY AND USE OF UTILITY SERVICES (MAR 2004)

(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.

(c) Schedule of utilities available from the Government without charge: Water and Electricity.

[End of Statement]

S-36.22 NOTICE OF PARTNERING (April 2004)

The Government intends to encourage the foundation of a cohesive partnering arrangement with the contractor and its subcontractors. This partnering arrangement will be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives are effective and efficient contract performance intended to achieve completion within budget, on schedule, and in accordance with contract plans and specifications. This partnering arrangement will be bilateral in membership. To implement this partnering initiative, it is anticipated that within 60-days of Notice to Proceed, the contractor and Government management teams to include on-site and off-site management will attend a 1 day partnering development seminar/team building workshop. Any costs associated with this initial partnering workshop, or any other follow-on sessions if necessary, excluding salaries, travel, lodging, and food for Government personnel, shall be borne by the contractor. The facilitator for the workshop shall be an objective and neutral third party participant, skilled in team building and group dynamics, who has no vested interest in the decisions reached by the group. Up to 10 Government personnel will attend this workshop. The partnering workshop will be held at – TO BE DETERMINED.

[End of Statement]

S-36.34 VEHICLE REGISTRATION

- (d) All vehicles operating on Army Installations must have a valid registration, valid certificate of insurance, current safety inspection and be operated by a licensed driver. Vehicle operators shall be prepared to present these documents when requested by the security guard.
- (e) Contractor vehicles utilized in performance of the contract shall be registered with the Installation Provost Marshal for entry into any Army Installation. This includes contractor employees' privately-owned vehicles (POVs) used to travel to and from the job site. Employees will be allowed to register only one vehicle. It shall be the sole responsibility of the contractor to register vehicles with the Provost Marshal.
- (f) Prior to contract performance, the contractor shall provide the Contracting Officer with a list of company-owned vehicles, employee POVs, and any subcontractor vehicles to be registered. The Contracting Officer will prepare a request for vehicle registration to the Provost Marshal. Upon receipt of the signed request the contractor shall report directly to the Provost Marshal for vehicle registration. Contractor employees must report in person for registration of their POVs. The following documents will be required to be presented to the Provost Marshal for vehicle registration:
 - (1) Contracting Officer's request for vehicle registration.
 - (2) Valid Vehicle registration
 - (3) Valid Certificate of Insurance
 - (4) Current Safety Inspection
 - (5) Valid driver's license
- (g) At any time contractor employees (or subcontractor employees) are operating contractor-owned vehicles on an Army Installation, they shall have in their possession a letter signed by a corporate officer authorizing the individual to drive the vehicle.
- (h) The Contracting Officer and the Provost Marshal office shall be notified of any changes in vehicles within three business days of the change.

- (i) In the event the Provost Marshal issues extended passes for vehicles, lost passes shall be reported immediately, in writing, to the appropriate Provost Marshal Office, in order to obtain new passes. Notification shall include all circumstances surrounding the loss of the original passes. All vehicle passes issued shall be returned to the Provost Marshal upon completion of the contract, termination of an employee or discontinued use of the registered vehicles.
- (j) Failure to follow the procedures outlined above may result in delays in entering Army Installations. The Government is not responsible for any adverse impact on the contractor or its operation as a result of delays due to the failure to register vehicles.

S-36.5 TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER

1. This provision specifies the procedure for determination of time extensions for unusually severe weather in accordance with the contract clause entitled DEFAULT (FIXED-PRICE CONSTRUCTION). In order for the Contracting Officer to award a time extension under this clause, the following conditions must be satisfied:

a. 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.

b. 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.

2. The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location and will constitute the base line for monthly weather time evaluations. The Contractor's progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4	5	6	4	3	3	3	4	3	5	4	7

3. 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 2, 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, 31 Oct 89]

S-36.6 CERTIFICATES OF COMPLIANCE

Any certificates required for demonstrating proof of compliance of materials with specification requirements shall be executed in five (5) copies. Each certificate shall be signed by an official authorized to certify in behalf of the manufacturing company and shall contain the name and address of the Contractor, the project name and location, and the quantity and 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.

[End of Statement]

S-36.7 IDENTIFICATION OF EMPLOYEES

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 the release of any employee. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

[End of Statement]

S-36.8 GROUND-FAULT CIRCUIT INTERRUPTERS

Ground-fault circuit interrupters for all 125-volt single phase 15- and 20-ampere receptacle outlets which are not part of the permanent wiring of the building or structure shall be provided by the Contractor in accordance with Section 305-6 of the 1999 National Electrical Code.

[End of Statement]

S-8 UTILITY OUTAGES

Utility outages shall be as hereinafter specified, unless otherwise indicated or specified. Interruptions to existing utilities shall be held to a minimum. Outages to facilitate connections to existing systems shall be scheduled to take place during periods of minimum demand. The Contractor shall submit a planned schedule of outages to the Contracting Officer for proper coordination with existing facilities, and shall notify the Contracting Officer in writing not less than 45 days in advance of the intended interruptions. Planned schedule of outages shall include specific dates, times, and anticipated duration of proposed outages. In the event the proposed outages interfere with station operations, the Contracting Officer will consider or offer alternate dates and/or times. Outages may be permitted during off-peak hours, hours of darkness, weekends, and holidays, at no additional cost to the Government. Work shall be planned to minimize outages. No utility outage will be permitted until the Contractor receives written approval from the Contracting Officer.

[End of Statement]

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Q1. From Dick Pacific, clarification to RFI #1, dated 6/15/04 -

I have reviewed Add #1 and it appears to answer most of the questions I asked in my RFI # 1. However as Sht C-3 is still unchanged please clarify how we are to install the new electrical and mechanical loop under the existing interior roads fronting the interiors of bldg 554 and 551 if they are not removed and reconstructed.

RESPONSE: The following statement should clarify what is required for areas impacted by utility work. Any existing road, walkway or other items that must be removed or otherwise impacted by utility work must be restored to existing condition.

Q2. From Capitol Furniture Distributing Inc., dated 5/27/04 -

I am wondering who will secure the furnishings for this facility?

RESPONSE: Furniture is not part of this construction project. Furniture will be purchased separately by the government.

Q3. From Dick Pacific, RFI #3, dated 6/16/04 -

Reference: Structural Questions/Clarifications on the RFP

Question 1:

The concept structural drawings do not indicate any strengthening of the existing wall footings for seismic loads. We wish to verify that because the shear walls are lightly stressed and there are no non-compliant issues with the foundations (based on the tier 1 evaluation provided), the foundations do not need any seismic upgrades.

RESPONSE: The Seismic Evaluation Study and Progressive Collapse Vulnerability Assessment report does not include strengthening of existing foundations because no deficiencies were found based on a tier 1 evaluation (TI 809-05).

Question 2:

The concept structural drawings do not indicate any strengthening of the existing wall footings for the mitigation of progressive collapse. Are the existing wall footings adequate to support the additional 150 mm of shotcrete around the perimeter of the building? Or will these footings need to be enlarged?

RESPONSE: The footings for the walls to receive shotcrete will likely need to be enlarged based on the available geotechnical information.

Question 3:

Page 6-4 in the Statement of Work (9 April 2004) indicates "The bidder shall assume that existing structural members are adequate for existing floor loads." On the other hand, the Structural Concept Design and Calculations in Attachment 3 identify a number of deficiencies to the floor framing under gravity (i.e. dead and live) load. As these two portions of the RFP appear to be in conflict, we wish to verify that the structure can be assumed adequate for the existing floor loads and that strengthening is only required if the live load in an area is increased (i.e. at the new cooling tower, machine rooms, locker rooms and arms rooms).

RESPONSE: The two statements do not conflict, however the structural evaluations study and progressive collapse vulnerability study has been amended. Seismic Evaluation Study and progressive Collapse Vulnerability Assessment, addresses existing structural members that are

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affected by requirements for seismic, ATFP, new dead or new live floor loads, as required by referenced codes. The referenced statement in Page 6-4, refers to portions of the structure that are not altered or affected by the alterations (seismic, ATFP or new floor loads). Those unaffected areas by alterations are not required to be strengthened in compliance with the referenced code requirements. Refer to IBC 2000 para 3402.1, Existing buildings or structures and para 3402.2.1 Existing live load.

Can it be assumed that the floor framing for all the typical office, classroom and residential areas are sufficient for gravity loading? What is the live load requirement for the TA-50 Gear rooms?

RESPONSE: Concur, assume the existing framing as explained above are acceptable provided they are unaffected by new seismic, new AT/FP, new dead or new live loads. Gear room live load is 75 psf.

Question 4:

The structural concept drawings indicate the use of FRP on the existing slabs and girders. FRP systems by themselves have low fire endurance. Does the proposed FRP composite need to be insulated in any manner to protect it from fire? This may not only have an impact on the thickness of the overlay, it may also have a significant impact on the overall cost of the FRP system.

RESPONSE: The concept drawings will be revised to show steel beam reinforcement of the existing concrete slab. Should FRP be used, fire protection issues will need to be addressed. To be provided in forthcoming Am-0006.

Question 5:

For the purpose of the progressive collapse analysis, is the existing breezeway (between grid lines 10 & 11) in Building 549 considered an exterior portion of the building? There was no consideration of element removal along grid lines 10 & 11 in the structural concept design. We wish to verify that although this area is "open" it is not considered exterior.

RESPONSE: Breezeways are not considered exterior.

Question 6:

Paragraph 9.2 (Section 01012 – Page 9) in Attachment 17 indicates that all drawings shall be created in Microstation format. Can AutoCAD be used in lieu of Microstation?

RESPONSE: No.

Question 7:

Table 1 in the structural concept calculations (SSFM report pages 6 - 9) provides the Tier 1 seismic evaluation and recommendations for all four buildings in Quad E. For both buildings 549 & 552, a deficiency is noted under "Seismic – Reinforcing Steel." The SSFM report states, "Horizontal reinforcing steel ratio in shear walls less than 0.0025." However, in the recommendation section it states, "Since stresses in shear walls from Tier 1 analysis are low and there is significant redundancy in the number of walls, assume low steel ratio is adequate." As a result, no remedial action is proposed for this deficiency on the concept drawings. We wish to verify that this reasoning is acceptable to the Army and no form of retrofit is required.

RESPONSE: Confirmed, no retrofit required for existing shearwalls with low steel ratio.

Question 8:

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The Structural Concept Calculations (See page 24) indicate a 3" – 20 Gage deck with ½" puddle welds at supports and 1 ½" TSW @ 24" o.c. As no drawings of the existing building have been provided, we wish to verify that this is indeed the composition of the roof diaphragm.

RESPONSE: The welding shown in the calculations is based on visual observation.

Question 9:

There are a number of non-load bearing concrete and CMU walls being added on the interior of the building. No new wall footings are indicated on the structural drawings. Please verify if additional footings are required or if these walls can sit directly on the slab-on-grade.

RESPONSE: New footings should be provided for the non-bearing CMU and concrete walls.

Question 10:

Section 5-7 in the Scope of Work (Page 5-12) indicates that the Arms Vault shall have: 6" slab-on-grade, 8" thick concrete walls and an 8" thick concrete ceiling. The structural concept drawings do not indicate any upgrades to the existing structure in these areas. Does the existing structure need to be upgraded to meet these requirements (i.e. does the slab-on-grade and floor slab need to be removed and replaced to meet the requirements)?

RESPONSE: Yes. Provide construction to meet the requirements of AR-190-11 including new concrete grade slabs and roof slabs as required. Note that AR-190-11 requires 6" minimum concrete ceiling.

Q4. From Dick Pacific, RFI #4, dated 6/16/04 –

1. In order to analyze the buildings in this project for progressive collapse avoidance, we are required to use a design document that is not mentioned in SOW 6.2.1 Design Criteria.

Specifically that document is *Department of Defense Minimum Anti-Terrorism/Force Protection Construction Standards, Guidance on Structural Requirements*". The most current effective date on this document that we have is March 05, 2001.

Please confirm that this is the correct version of this document to use. If a later version is to apply may we be furnished with the correct one?

RESPONSE: Concur, the latest date of the document Department of Defense Interim Anti-Terrorism/Force Protection Construction Standards, Guidance on Structural Requirements, is Mar 5, 2001. Note that the reference document title in your letter is been corrected to the title given above. It is the latest specific DOD guidance on progressive collapse.

2. In addition, the above referenced document makes mention to the possibility of a facility owner requiring more stringent limits on damage. Please verify that this facility is not required to meet a "more stringent limit" on acceptable damage and if it is please provide a definition.

RESPONSE: There are no additional or more stringent progressive collapse requirements by owner.

Q5. From Dick Pacific, RFI #5, dated 6/16/04 –

1. Regarding windows – we have been furnished with original window details on sht. A-3.2 We are also given instruction under the Arch SOW 5-4-10 to provide historic windows in conformance to these details

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This appears to conflict with the directions given in SOW 15-5 which allows a framestyle similar to that used in Quad F.

In Quad F while the windows are similar in concept they do not fully replicate the profiles show on A3.2. In addition there are interior wood trims at the head and the stool of the window that do not appear to be provided on Quad F.

RESPONSE: The windows are to match those installed in Quad F in terms of looks (number of panes, etc) and color. The windows must also comply with ATFP requirements.

2. Please confirm that from an appearance and historical standpoint that a window installation similar to that of Quad F is acceptable in satisfying the current RFP requirements on this project.

RESPONSE: The windows are to match those installed in Quad F in terms of looks (number of panes, etc) and color. The windows must also comply with ATFP requirements.

3. Another question relates to Attachment 18 the Historical Survey. What is included is Quad D (pg 63-81 not Quad E. Are we to follow the discussion for Quad D or should we be furnished with the discussion for Quad E?

RESPONSE: Will be provided in Am-0003.

Q6. From Dick Pacific, RFI #6, dated 6/16/04 –

In addendum 01 drawings Sht A 1.5 note # 6 has been added which is confusing to us. The note calls for a window to be installed 152 MM in front of a block or concrete infill. By our measurements we do not have room to do this. The existing wall is 254 mm, The added shotcrete wall is 152 mm. The window frame is recessed approx 76 mm. The window frame is approx 100 mm. This leaves only 76mm not 152 mm unless the 152mm shotcrete wall thickness is compromised in some way. Additionally this is a problem if the shotcrete wall is not required. Is the goal of the infill security? Could a wire security screen be provided at the interior of the window in lieu of the infill? Could a section sketch be provided to make what is required clear?

RESPONSE: Windows can be centered approximately 76 mm on each side or pushed back to infill wall.

Q7. From Dick Pacific, RFI #7, dated 6/21/04 –

At Bldg 552 there is a room on the ground floor that exhibits Radiological warning signs but is not highlighted in any way in the environmental report. See attached picture. Please confirm that there are no expected environmental concerns resulting from the current use of that room.

RESPONSE: There are no environmental concerns related to the existing NBC rooms.

Q8. From Dick Pacific, RFI #12, dated 6/21/04 –

On page SOW 10-6 section 10-5.2 states: "Compressor variable frequency drive (VFD) motor and controls shall have the following characteristics." Attachment 9 The concept design analysis does not describe variable speed chiller motor, and it is not commonly deemed economic for the size of chillers needed for the project. Please confirm if the chiller is to be provided with variable speed compressor motors.

RESPONSE: Chillers are to be provided with variable speed compressor motors.

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Q9. From Dick Pacific, RFI #2, dated 6/15/04 –

1. Relating to UST's environmental SOW 16.6

Please clarify whether or not all USTs are to be removed as part of this project including those tanks associated with Bldgs 551 and 550.

RESPONSE: To the best of our knowledge, there are no USTs in Bldgs 549 and 552. If any USTs are discovered during construction a modification will be processed for removal of the UST. Work In Bldgs 550 and 551 is not a part of this contract.

2. Are we to assume that undocumented UST's mentioned are present and must be removed.

RESPONSE: Again to the best of our knowledge, there are no USTs in Bldgs 549 and 552. If USTs are discovered a modification will be processed for their removal.

3. How much petroleum-contaminated soil should be allowed for each tank? Or are we to treat the contaminated soil removal as a separate action in accordance with section SOW 16.6.1.1 and 16.6.2

RESPONSE: Please see revised Proposal Schedule in Amendment 0005 for unit price cost for removal of contaminated soil.

Q10. From Dick Pacific, RFI #8, dated 6/21/04 –

1. RFP paragraph 10-4.3 states that the equipment sizes shown on the attached documents are minimums. Please clarify if this requires the bid to include the indicated sizes as a minimum. Is smaller equipment allowed if design load calculations show the load to be less than what is called out in the RFP.

RESPONSE: Equipment sizes shown on the attached documents are minimums. Smaller equipment is not allowed.

2. Are the pipe sizes shown on the concept drawings mandatory minimums?

RESPONSE: Yes.

3. RFP specifies glazing to be used on the project. If the glazing does not meet the other criteria specified by the RFP (such as energy efficiency), is the glazing to be changed?

RESPONSE: Yes. The glazing shall meet all minimum criteria required.

4. Is electrical reheat acceptable for the Arms vault?

RESPONSE: Yes.

5. Are the number of zones shown on the concept drawings mandatory? Is consolidation of similar thermal spaces into common zones for administration spaces acceptable?

RESPONSE: Mechanical layouts shown on drawings are conceptual. Contractor is required to do his/her own calculations; sizing and selection of equipment, piping, ductwork, and related accessories, and layout to ensure proper fit and function.

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6. Air intake and exhaust grilles or louvers on the mechanical concept drawings are not shown on the Architectural concept drawings. Are they allowed to penetrate the exterior walls and satisfy the Historic Preservation requirements as shown?

RESPONSE: Drawings will be revised to show air intakes routed to the roof in forthcoming Am-0006.

7. What capacity excess should be provided for backup chilling of Quad F?

RESPONSE: Per Corps of Engineers, Quad E cooling system is sized for serving Buildings 549, 550, 551 and 552. Interconnection between Quad E and Quad F is for supplemental use only.

8. What pumping consideration is to be made to backup Quad F, i.e. head loss and flow?

RESPONSE: Per Corps of Engineers, Quad E chilled water pumping system is sized for serving Buildings 549, 550, 551 and 552. Interconnection between Quad E and Quad F is for supplemental use only.

9. Cooling tower specified by RFP conflicts with selection in the attached concept design calculations/selections.

RESPONSE: Cooling tower in the attached concept design calculations/selections is provided for information only. Cooling tower provided should be in accordance with the RFP.

10. Paragraph 10-5-2.15 requires cooling tower noise control to “meet maximum sound level indicated.” None was found. Please provide the maximum sound level criteria.

RESPONSE: Mechanical systems including cooling tower shall comply with ASHRAE Handbook and Manuals sound criteria. Acoustical treatment shall be provided to meet these levels.

Q11. From Dick Pacific, RFI #13, dated 6/28/04 –

Please provide functional and area requirements information for the Chaplains Office and waiting area shown on the third floor building 549 Sht. A1.3. We have been unable to locate this information.

RESPONSE: See Sheet T-3.

Q12. From Nan, Inc., RFI #2, dated 6/28/04 –

Architectural/Historical Questions

1. Door Type DF2A is noted on the Building 549 – Third Floor Renovated Plan (ref. Sheet A-1.3). However, it is not listed in the Door Schedule on Sheet A-3.1. Please provide door schedule information for Door Type DF2A.

RESPONSE: All door type DF2A should be a door type SF2A.

2. Is acoustical treatment of the cooling tower required due to proximity of adjacent residential areas? If so, what is the desired STC rating of the equipment/enclosure or sound level?

RESPONSE: Mechanical systems including cooling tower shall comply with ASHRAE Handbook and Manuals sound criteria. Acoustical treatment shall be provided to meet these levels.

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3. Government Historical Consultants/Representatives have taken exception to the parking lot light fixtures on Quad C, disagreeing with the use of standard seamless aluminum pole fixtures specified in the RFP, preferring a more "historical" look. However, after review of the Quad E RFP, we found that this is not addressed in the RFP's historical section. Furthermore, the RFP does not require wholesale replacement, and a fixture change would not be sensible unless they are all replaced.

RESPONSE: New historical type streetlights were recently installed along Trimble Road, which lies within the historical boundary area of the base. Similar type streetlights may be installed for this project. The issue of wholesale replacement must be verified with the Army, as this will depend on budget and schedule.

4. SOW Para. 9-4-21 says to provide area lighting as shown on the RFP drawings. Where is it shown, and does it mean to provide a uniform level of lighting along the entire perimeter of each building? In addition, Government Historical Consultants/Representatives have taken exception to the noted fixture type to be mounted on seamless aluminum poles. Does the government have an acceptable light fixture that can be used for this area? A similar area lighting requirement is also noted in SOW Para. 9-1.11, Building Security Lights. This is a relatively high level of lighting, particularly for facilities that border a residential area. And again, does the government have a light fixture that is acceptable to the Government Historical Consultants/Representatives? There is a wide range of fixture costs, when historical appearance is necessary.

RESPONSE: As indicated above, this type of streetlights may be installed for this project. Lighting layouts of the parking areas were provided in the revised drawing set.

5. What are the "structures" shown at the roof of the appendages of Bldg. 552, at Gridlines 6 and 16? And how do they need to be addressed within the contract?

RESPONSE: "Structures" are existing and to remain.

Q13. From Dick Pacific, RFI #15, dated 6/30/04 –

1. "Although not indicated on the SSFM conceptual structural drawings, we assume that the two new cooling towers on the roof of Building 552 will require new structural framing to support the equipment's gravity, wind and seismic forces. It is stated in Section 10-5.2 Cooling Towers (SOW 10-9) that "Framework, structural supports and equipment supports shall be Type 304 stainless steel." Please verify whether or not structural steel added within the attic space of the structure (such as new wide flange support beams) need to be stainless steel".

RESPONSE: Structural steel added to the attic space does not need to be stainless steel.

2. Mechanical design analysis attachment 9 page 3 states that "the SIPRNET server secure area shall be provided with a chilled water fan coil unit. The mechanical concept drawings Sht. M-3 do not show the room being served by its own individual unit. Please clarify which design concept we should follow.

RESPONSE: Follow Mechanical design analysis for air conditioning SIPERNET server secure area.

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Q14. From Dick Pacific, RFI #9, dated 6/21/04 –

In reviewing the function area requirements in the Statement of Work there appear to be some discrepancies.

1. Page SOW2-6 section 2-2.2 states that heavy equipment storage areas are to be provided for five medium and two small companies. The concept drawings only indicate that there are 1 medium and 2 small company areas.

Please confirm the concepts drawings are correct and that we are only providing support areas for the three companies not seven.

RESPONSE: Yes. Provide support areas for three companies. The SOW corrected, see Am-0005.

2. Page SOW2-7 section 2-2.3 calls out the amount of lockers for a large COF and a medium COF. In this project it is my understanding that we are providing for a medium COF and a small COF. Please provide the amount of gear lockers required for a small COF.

RESPONSE: Corrected SOW, see Am-0005. Medium requires 80 lockers, Small requires 40 lockers.

3. Please clarify that section 2-2.5 intention is that mens and womens toilets/showers and lockers would be sized based on the combined usage of the three companies mentioned above. For example based on the chart for mens lockers $82+34+34=148$ lockers are required. Please confirm

RESPONSE: Correct. Mens lockers $82+34+34+150$ lockers.

4. Page SOW2-28& 29 section 2-5.1.3.2 and 2-5.2.3.2 state that the minimum stated dimension for base cabinets and countertops is (including the range width) . This appears to be incorrect we believe the correct term would be (excluding the range width). In addition the minimum dimensions stated appear to be significantly less than what is shown on the enlarged unit plans on the RFP concept plans. Which are we to follow?

RESPONSE: The SOW is stating minimum dimensions. Follow the plans.

Q15. From Dick Pacific, RFI #10, dated 6/21/04 –

1. On page SOW 9-1 Section 9.1.3 we are asked to provide temporary power to the Bldg 550 ADN. .Are existing electrical site distribution, one-line diagrams and plans available for Bldgs 550 and 551 to assist us in determining was this involves? In the absence of this information may we be provided with what the temporary power requirements are for the ADN.

RESPONSE: No diagrams/plans available. ADN requires two 120V, 30A circuits.

2. RFP Attachment #17, pp. 12.2.2.6.1, pg 17 lists Off-Site Plans and One-Line Diagrams. All drawings and SOW presently indicate only on-site work. Please clarify what off-site work if any is required and furnish sufficient information so we may estimate its cost.

RESPONSE: There is no off-site work in this project. Project limits are as indicated on the drawings.

3. On page SOW 2-10 Section 2-2.4.3 Electrical Room(s) “Each company shall have independent metering and control of the electrical systems for its own spaces If separate electrical metering monitoring power usage) is required then it appears that the quantity of AHU’s shown on the concept drawings would not allow for the mechanical power consumption to be separately metered. Please advise if this is a problem

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RESPONSE: No problem.

4. On page SOW 2-27 Section 2-4.13.7.4 Other Requirements states “No piping, conduit or ductwork shall be exposed in exterior corridor” During the site visit we were encouraged to visit Quad F which we did. What we noticed was a certain tasteful amount of conduits and pipes were run exposed in the exterior corridor. It appears that furring of these conduits would have interfered with the historic character of the corridor. May we assume that this project will be viewed similarly and that some conduits can run exposed as was done in Quad F.

RESPONSE: See revised SOW in Am-0005.

5. On page SOW 3-2 section. 3-8, and page SOW 9-16 section. 9-4.22 call for powered access control gates. Does ATRP access control power for parking require emergency power?

RESPONSE: No emergency power required for access control.

6. On page SOW 3-3 section 3-9 Do “obstructions within 10 meters of inhabited buildings,... 150mm or greater”...include polelights or lighting bollards?

RESPONSE: No.

7. On page SOW 12-6 section 12-11.3 States “Smoke sensors with sounder bases shall be provided in each sleeping unit and shared kitchen area”. RFP drawing sheet E-2 (Typical Unit Elec Plans), does not indicate any smoke sensors in the kitchen area. Please clarify which guideline we are to follow.

RESPONSE: Provide smoke sensors in accordance with the SOW. Locate in accordance with NFPA 72.

Q16. From Dick Pacific, RFI #11, dated 6/21/04 –

1. Sheet T-2, Wall Legend noted ‘See fire protection drawings for fire ratings of various types of walls’. Currently we have not been issued the fire protection drawings. If they exist may we be furnished a copy?

RESPONSE: Disregard wall legend note. The fire rating of various walls were added in the Fire Protection Chapter 12 of our Statement of Work.

2. A1.1, Building 549 – Note 12 indicates the entire metal deck and roof truss must be protected by a 1 hr fire resistive spray. In statement of work page 5-3 section 5.3.2 classifies the building to be Type IIB construction with non-combustible non-rated construction. According to our interpretation of the IBC that would not call for the application of the spray-on fireproofing on the steel structure. Is the intent to for it to be applied to exceed code?

RESPONSE: Verified as Type IIB, therefore spray-on fireproofing is not required.

3. A1.1 Building 549, First Floor Renovated Plan indicated one entrance and vestibule for Men’s Locker Room. page SOW2-11 section 2-2.5.2 noted ‘For egress purposes, occupant load shall be equal to the higher of the following numbers: a) number of lockers in the room, or b) the code determined number of occupants’ The floor plan and the chart included in the section indicate

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more than 150 lockers in Men's Locker Room. More than 50 occupants would require at least two means of egress are required for the locker room which is Group A-3 occupancy group as described in SOW5-3, 5-3.6. Where shall the second entrance (egress) and vestibule be? We are unable to readily see how this can be accomplished. The code required number of occupants would only be 32 based on room size. This would not trigger the requirement for the second entrance. Please clarify how we are to proceed.

RESPONSE: For occupant load determination see Am-0005. Egress requirements shall be in accordance with NFPA 101.

4. Sheet T-2, Floor Area Table indicated Occupancy S-2 on entire First Floor of Building 549. The Men's Locker Room is A-3 according to SOW 5-3, 5-3.6. Should the wall shown be considered an occupancy separation between the Men's Locker Room and the storage areas on First Floor?

RESPONSE: For occupancy classifications see Am-0005. The locker room and the storage shall be considered non-separated uses.

5. On page SOW 2-27 section 2-5, noted 'Building 552 – Unaccompanied Enlisted Personnel Housing (UEPH)Only able-bodied military personnel will occupy UEPH Building; handicapped accessibility is not required.' Is accessibility required for the exterior and interior corridors?

RESPONSE: The Unaccompanied Enlisted Personnel Housing is required to be accessible at the ground floor exterior corridor and the ground floor areas accessible to the general public such as the Toilets and Game Rooms.

Q17. From Dick Pacific, RFI #14, dated 6/28/04 –

Page SOW 5-4 section 5-4.6.1.1 states provide 4-ply built-up roofing for use over rigid board insulation on metal deck. Sht. A-1.5 states reroof building with roofing that meets spirit high reflectance requirements. As the terminologies being used are somewhat ambiguous please confirm that what is required is removal of the existing roof and insulation down to the metal deck and new roofing and insulation being provided to meet the RFP requirements.

RESPONSE: Clarified SOW, See Am-0005.

Q18. From Nan, Inc., RFI #1, dated 6/23/04 –

Section 00120: Proposal Submission Requirements and Evaluation Factors for Award

1. Para. 2.5.3.1.1 and 2.5.3.2.1 note that Offerors will receive a "Neutral" rating if "one or more projects were not issued a final performance evaluation." Firstly, we feel that this is unfair as completed and turned over projects may not have a final performance evaluation (PE) issued until after all contractual obligations (i.e. modifications) are met. Furthermore, it has been in our experience that this process can take from 6 months to 1 year after project completion to receive a final PE. Secondly, for non-Federal Government projects (i.e. private), such final PE, similar to those issued under Federal Government projects, may not be issued. In these instances, what can an Offeror provide to meet the requirement for a final performance evaluation (i.e. written and signed

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statement attesting to “satisfactory or above” performance on the project, copies of project letters and awards received, etc.)?)

RESPONSE: As stated in Section 00120, Offeror who receive a neutral rating will not be rated favorably or unfavorably if one or more projects were not issued a final performance evaluation. Yes

2. Regarding Volume III: Subcontracting Plan, requesting a Small Business Subcontracting Plan from Large Business Concerns, as this is a design-build contract, it is very difficult for an Offeror to list definite subcontractors for this project at the time of bid submittal. If an Offeror is required to list subcontractors to be used on this project, this will limit the competition to only large businesses, as most small businesses do not have the capacity to estimate a design-build project of this size (i.e. RFP concept drawings). Therefore, we ask that the Government hold the Offeror liable to the small business percentage goals presented in its plan, and not necessarily the goals for a specific trade.

For example, if an Offeror proposes to use a women-owned small business painting subcontractor for an X% of the total planned subcontracting dollars. However, after award of the project the Offeror finds that that particular subcontractor is unable to perform on this project. In this case, an Offeror should not be held liable to replace the trade of the subcontract, but rather the percentage proposed for that small business subcontracting concern (i.e. replace with a WOSB plumbing contractor for X%).

RESPONSE: FAR 52.219-9 requires the subcontracting plan to include GOALS expressed in terms of percentages of total planned subcontracting dollars, for the use of small business (SB), small disadvantaged business (SDB), women-owned small business (WOSB), HUBZone small business (HZSB), veteran-owned small business (VOSB), and service-disabled veteran owned small business (SDVOSB) concerns.

It further requires a description of the principal types of supplies and services to be subcontracted to SB, SDB, WOSB, HZSB, VOSB, and SDVOSB concerns.

A substantive plan will target specific SB, SDB, WOSB, HZSB, VOSB and SDVOSB as members of the original team or as potential subcontractors based on past experience, market research, etc.

[Statement of Work \(SOW\) dated 9 April 2004](#)

3. In reviewing the RFP documents, it was noticed that the project name is missing from each page within the SOW, Chapters 1 thru Chapter 16. In order to identify that these pages apply to RFP No. W9128A-04-R-0012, we suggest providing such information in the header/footer of each page.

RESPONSE: Suggestion noted. Will identify SOW with a header on future projects.

4. Attachment 18, Schofield Barracks Historic Architectural Survey. We understand that this attachment is to contain excerpts of the “Historic Architectural Survey for Significant Features in Quads B, C, D, E, & F and Condition Assessment of Quad F”, as applicable to Quad E. However, this attachment contains: the cover page/title page for the entire survey; Section I: Introduction (pages 1 to 21); and Quad D – Buildings 449, 450, 451, & 452 (pages 63 to 81); and the cover page for Section IV: Quad F – Buildings 649, 650, 651, & 652. Please confirm that these pages are meant to be included as part of Attachment 18. If not, please provide the correct applicable pages.

RESPONSE: See Am-0003.

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5. The SOW, para. 4.4.4 notes that a quadrangle sign, similar to that provided for Quads C & F, is to be provided on this project. Please provide detail.

RESPONSE: The selected Contractor shall detail the sign to match Quad C & F quadrangle sign.

6. Section 5-1.2.3 indicates to remove existing windows and doors, and enlarge opening to provide new fenestrations to meet SHPO approval. In previous barracks renewal projects, enlargement of openings were not desired by the historical staff. Please verify that the former statement is indeed the intent on this RFP.

RESPONSE: Enlargement of openings for new doors are for Mechanical Equipment that need larger openings for maintenance.

7. Section 5-4.6.1.1 requires a built-up roofing (BUR) system with an Energy Star certification. However, Modified Bitumen Roofing systems have almost completely replaced BUR in Hawaii over the last 15 years, with newer technology that produces a rubber modified (SBS) asphalt sheet membrane that has superior weathering characteristics to that of Conventional Fiberglass-Asphalt sheets. Therefore, can a Modified BUR system be used in lieu of BUR noted in RFP?

RESPONSE: We feel that it is acceptable as long as it is equal to or better than specified. Also, with Energy Star certification.

8. Section 5-4.6.2 requires a manufacturer's 20 yr warranty on copper. We are not aware of any manufacturer who will provide this. If the COE has access to such information, please provide.

RESPONSE: Deleted 20 year warranty requirement.

9. SOW para. 5-5.12.3 (page 5-11) provides a table of FSTC wall ratings for various spaces within the buildings. Do the doors in exterior walls of these spaces also need to have this same rating, i.e., at Mechanical Rooms? Would flush acoustically rated HM doors be acceptable in lieu of the noted paneled "historic" type doors?

RESPONSE: Door are not required to have the same FSTC rating as the walls. Provide "historic" type doors as indicated on drawings.

Architectural Questions

10. Sht. A-1.5 paint colors indicate only 2 colors – a light and dark color. Are more colors required and do they need to match recently renovated Quads?

RESPONSE: For now, only two (2) colors are called for. See Note #3 on Sheet A-1.5.

11. Sht. A-1.5 shows louvers on the walkway side of the gym. On similar past projects, Government Historical Consultants/Representatives have taken exception to louvers where there once were windows. Please verify that this is indeed the intent on this RFP.

RESPONSE: The louvers are presently existing. Our intent is to replace them. It is also a safety issue because it is a gym.

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12. Exterior elevations do not show any wall louvers or grilles that may be required for HVAC. Is it acceptable to route outside air and exhaust ducts to wall openings with louvers rather than routing them to the roof? On similar past projects, Government Historical Consultants/Representatives have expressed a desire to keep the roof lines as clear of mechanical equipment as possible to restore the appearance of the original construction.

RESPONSE: Outside air intakes are required to be routed to the roof.

13. Sht. A-2.5 roof bracket detail shows BUR on plywood decking. Structural detail 2/S2.04 and SOW 5-4.6.1.1 indicate that there is a metal deck. Please clarify.

RESPONSE: Delete plywood deck. See SOW 5.4 Section 5-4.6.

Civil Questions

14. Note 2 on sheet C-3 indicates all existing utility lines and manholes that are not utilized shall be removed. Please confirm if the limit of utility removal will be confined to the project limit indicated on the drawing.

RESPONSE: Yes, we can say the limits of existing utility removal is limited to the project limits as the utility removal for the remainder of the site can be accomplished in the future.

Structural Questions

15. Sheet S1.01, progressive collapse item 3 and detail 2/S1.01 indicate a new beam along the lanai for progressive collapse. The floor plans do not reflect columns to support the new beam. Are columns allowed to be dropped onto the lanai or is the requirement to hang the beams from the existing floors?

RESPONSE: Adding new columns along the exterior lanai has not been approved by Historical Preservation authorities. The concept is based on a design in which columns are not added.

16. Sheet S1.01, Live Load Retrofit Schedule, Item 2, indicates that FRP should be installed on the top and bottom of the slabs. Has any investigation of the existing floor slabs been done to determine that FRP can be applied to the surfaces of the slab?

RESPONSE: Investigation has not been done to determine if FRP can be applied to the surfaces of the slab. The concept design has been changed to steel beam reinforcement of the existing concrete slab in lieu of the FRP.

17. Sheet S1.01, Live Load Retrofit Schedule, Item 2, FRP is indicated on the top and underside of the slabs and also on the beams for strengthening, yet SOW 6, para 6-5.7 indicates that existing members are to be assumed adequate for existing loads. The calcs appear to indicate that the FRP is included as an enhancement for AT/FP. Please clarify the extent to which FRP is required and if there is a minimum design requirement for the FRP.

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RESPONSE: FRP has been deleted. Revised drawings will be issued in Am-0006 to provide steel beam reinforcement for the existing concrete slab.

18. Sheets S1.01 and S2.01 indicate shotcrete on the exterior walls. A note specifies that 150 mm thick shotcrete walls are to be provided. Is the 150 mm thickness the minimum thickness that will be allowed and is the thickness based on a composite wall thickness?

RESPONSE: The 150 mm thickness of the shotcrete walls is based on a non-composite section.

19. The drawings and calcs do not appear to indicate that any work is needed for the existing transverse shear walls. The calcs indicate that the existing walls are okay for strength but do not meet FEMA 310 requirement for reinforcement ratio. If the wall stresses are okay, can the walls be considered adequate? Or do walls need to be strengthened anyway to increase the reinforcement ratio in the walls? If walls need to be modified or added, will the floor plans accommodate new or thickened shear walls?

RESPONSE: Confirmed, no retrofit required for existing shearwalls with low steel ratio.

20. On Bldg 552, the architectural drawings appear to indicate that walls on grids 6 and 16, on the courtyard side of grid A are being demolished. The structural drawings do not indicate that these elements are being removed. There does not appear to be provisions on the floor plans to provide new supports for the floors and roofs on these grids. Are bearing walls on these grids being removed? If so, can the floor plan be modified to accommodate new columns or walls?

RESPONSE: Only the chase portion of the bearing walls along grids 6 and 16 will be removed. The new concept design provides support for the floor by adding new steel beams and girders. The contractor shall also provide enlarged foundations to support the proposed loads.

21. Cooling towers are shown on the roof of Bldg 552. The plans do not appear to indicate framing for the cooling tower structure. Is it intended that the cooling tower supports be incorporated into the given typical floor layout. If so, to what extent can the room layouts be modified to accommodate structural framing?

RESPONSE: The contractor shall provide additional framing and necessary reinforcement to the existing framing to support the new cooling tower.

22. The wind criteria noted in the structural SOW, Ch. 6, indicates that the wind design shall be based on ASCE 7, exposure C conditions. If the site conditions meet the requirements for exposure B, can exposure B be used?

RESPONSE: No. Use exposure C for hurricane prone area.

23. The SOW indicates that new footings shall be designed for an allowable bearing pressure of 3500 psf. Our experience is that bearing pressures under similar existing footings may exceed this value. Can it be assumed that footings that are not affected by the seismic upgrade are okay and will not require enlargement to reduce bearing pressures?

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RESPONSE: Where footing loads are not increased by seismic, ATRP, new live or new dead loads, existing footings may be assumed to be adequate. The contractor's soils engineer should apply appropriate engineering judgment for determining adequacy of existing footings where loads are increased.

24. Item 7 in the Seismic Retrofit Schedule, sheet S1.01 etc., does not appear to be identified on the plans. Please identify where the note applies.

RESPONSE: Item 7 of the seismic retrofit schedule applies to Building 550 which is not in the current scope of work.

25. Sheet S1.01 indicates cmu for the elevator shaft in Bldg 549. Sheet D/A1.4 appears to indicate concrete construction. Is either cmu or concrete acceptable?

RESPONSE: Either CMU or concrete may be used for the elevator walls.

26. The soils report (Attachment 7) that is provided is for a cooling tower installation. Can the recommendations in the report be used for the foundation design for Bldgs. 549 and 552?

RESPONSE: Yes.

27. The soils report (Attachment 7) indicates that the cooling towers for Quad E weigh 25,000 lbs each. Is the cooling tower referenced in the soils report the same equipment that will be located on the third floor of Bldg 552?

RESPONSE: The cooling towers referenced in attachment 7 are not the same equipment to be installed for this project.

Mechanical Questions

28. The Mechanical Basis states that "Hot water heat recovery pumps will extract hot water from heat pumps and deliver to storage tank." However, on the plans, we could not find the location of the heat pumps and could only find auxiliary condensers. Please confirm if a heat pump is to be provided or are the chillers just to be provided with auxiliary condensers for pre-heating purposes. If a heat pump is required, where will it be located?

RESPONSE: Chillers are provided with auxiliary condensers for pre-heating purpose.

29. Based on our review of the hot water sizing calculations and size of the hot water storage, it appears that the hot water system shown on sheet M-3 is sized for only one Barracks building only. Please confirm if there is adequate capacity to support Building 550 in the future. If not, where will equipment be located?

RESPONSE: Hot water calculation is based on TECHNICAL LETTER NO (ETL). 1110-3-489. Hot water system is designed to provide hot water for Buildings 549, 550, 551 and 552. Mechanical layouts shown on drawings are conceptual. Contractor is required to do his/her own calculations; sizing and selection of equipment, piping, ductwork and related accessories and layout to ensure proper fit and function.

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30. The RFP calls for welded black steel kitchen exhaust duct. Will the game room kitchen be provided with a commercial type grease hood? If so, will a an exhaust fan be required?

RESPONSE: Game room should have commercial type kitchen hood. Exhaust fan should be required.

31. Are sectional isolation valves required along the cold water, hot water, hot water return, CHWS, and CHWR loops?

RESPONSE: Yes

32. Is the existing roof adequate to support the new cooling towers proposed to be installed on Building 549?

RESPONSE: According to structural engineer the existing roof is not adequate to support the new cooling tower. Additional framing will require to support the new cooling tower.

33. Based on our review of the drawings, the chiller plant is located directly beneath the second floor training and classrooms. Is noise a concern and has there been consideration in locating the plant somewhere else?

RESPONSE: The plant is located in the building as requested by Corps Historical Representative. Noise may be a concern and should be a consideration by the design-build contractor.

34. AT/FP measures typically require that outside air intakes be located at roof level so that they are not readily accessible. Based on our review of the drawings, it appears that many of the main central station air handling units draw outside air directly from the exterior walkway area. Will this be acceptable per AT/FP requirements?

RESPONSE: Outside air intakes shall be located on the roof.

Fire Protection Questions

35. Will the attic space for each of the buildings require fire sprinklers?

RESPONSE: Attic space currently is not considered a combustible concealed space and does not require fire sprinkler protection. However, the design must take into account any new construction materials.

Electrical Questions

36. The electrical scope of work calls for removal of oil filled transformers and the existing underground secondary system feeding Buildings 549, 550, 551, and 552. The RFP electrical drawings show new transformers for Building 549, 552, and the chiller plant. What happens to the electrical services to Buildings 550 and 551?

RESPONSE: The electrical services to Buildings 550 and 551 must remain.

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37. Historically correct fixtures are difficult to determine due to the wide range of costs available. Therefore, please provide information on what types of luminaires are to be used on the exterior of the building, as well as in the gymnasium, that will be acceptable to meet the historical requirements of this project.

RESPONSE: We can give general descriptions of light fixtures that may be utilized, however, the actual selection of the light fixtures must be done during the design stage.

38. The RFP shows that parking lot lighting will be required, but does not clarify the extent of the area. Please provide such information.

RESPONSE: In forthcoming Am-0006, Drawing will be revised to show area requiring parking lot lighting.

39. The RFP scope of work for CATV mentions Verizon Media Ventures, but they no longer have the contract to provide the service. The current vendor is Craig Wireless. Please state if you concur with the latter statement.

RESPONSE: Concur.

40. The RFP scope of work states that area lighting shall be as indicated on the RFP drawings. The drawings does not show area lighting requirement. Please provide such information.

RESPONSE: In forthcoming Am-0006, Drawing will be revised to show number of light poles in parking area for bidding purposes. Layout of parking lot lighting must be done during the design stage.

General Questions

41. During the Pre-Solicitation Notices a few months ago, a total of four (4) buildings were noted. The current solicitation now includes only two (2) buildings, (B-549 and B-552) and the requirement for phasing and to maintain the operations of the utilities within the other two (2) buildings (B-550 and B-551). Is there a TIME FRAME that these other two (2) buildings will be occupied? In other words, do we assume that the two (2) buildings must be maintained during the entire duration of the contract? If not, please provide the time period(s) during which the utilities must be maintained.

RESPONSE: Buildings 550 and 551 will be maintained for the entire duration of the contract.

42. Arms Room location. There are three (3) arms room noted in Bldg. 549. All are located at the EXTERIOR of the building. Historical and Physical Security on other Quads require that the Arms Rooms be relocated to the interior of the building. Will this change be required? Will revised layouts be issued? SOW Chapter 2 Functional and Area Requirements par 2-1.1 indicates, "Functional spaces depicted on the RFP Concept Design Drawings have been coordinated with the proper contacts and have been sized and arranged for efficient use and circulation. The Design Build contractors shall incorporate the RFP Concept Architectural Design into their design proposal. The floor plan layout and relationship of functional spaces depicted in the architectural floor plans shall not be deviated from." Please advise.

RESPONSE: See revised SOW, Chapter 2, paragraph 2-1.1 in Am-0005.

SECTION 00900
RESPONSES TO QUESTIONS
SUBMITTED BY PLANHOLDERS
FOR
SOLICITATION NO. W9128A-04-R-0012

Q19. From Dick Pacific, email dated 7/9/04 –

Dick Pacific would like to ask permission to perform a limited (2 to 4 locations) scan of the existing suspended slab to better determine the existing reinforcing location. We would be using the firm in the attached website that would be using a radar scanner. The website further explains the methodology. We would propose scanning areas in the interior open corridor and would expect practically no inconvenience to the existing users. The entire process would be completed in less than a day.

RESPONSE: Yes.

Q20. From Nan, Inc., RFI #3, dated 7/8/04 –

Section 01900, page 13, par. 1.12.2 Phasing, indicates phasing requirements for buildings **NOT** identified in Quad E. Please clarify any phasing requirements since only Buildings 549 and 552 are in this contract.

RESPONSE: Section 01900, page 13, par 1.12.2 has been revised. See Am-0005. There are no phasing requirements in this project.

Q21. From Dick Pacific, RFI # 17, dated 7/14/04

Please clarify the phasing called for in section 01900 paragraph 1.12.2 of the General Requirements, it appears to reference a previous project.

RESPONSE: Section 01900, paragraph 1.12.2 has been revised. See Am-0005.