


SOLICITATION, OFFER, AND AWARD <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO. A16PS00021 000001	2. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 12/14/2015	PAGE OF PAGES 1 3	
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IMPORTANT -- The "offer" section on the reverse must be fully completed by offeror.

4. CONTRACT NO.		5. REQUISITION/PURCHASE REQUEST NO.	6. PROJECT NO.
7. ISSUED BY BIA NAVAJO 00009 301 WEST HILL ROOM 346 Contracting Office Gallup NM 87301	CODE A09	8. ADDRESS OFFER TO	
9. FOR INFORMATION CALL: 	a. NAME Lynelle Benallie	b. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) 505-863-8404	

SOLICITATION

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

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

Contractor shall provide services consisting of furnishing all labor, materials, equipment, supervision, and incidentals necessary for the rehabilitation of the Red Lake Dam, Navajo, New Mexico, per attached Specifications and Drawings.

FIRM FIXED PRICE CONSTRUCTION CONTRACT

- COVER-SF1442-Solicitation, Offer, and Award
- TABLE OF CONTENTS
- SECTION B - SUPPLIES OR SERVICES AND PRICES (BID SCHEDULE)
- SECTION C - DESCRIPTION AND SPECIFICATIONS
- SECTION E - INSPECTION AND ACCEPTANCE
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- SECTION G - CONTRACT ADMINISTRATION DATA
- SECTION H - SPECIAL CONTRACT REQUIREMENTS
- SECTION I - CONTRACT CLAUSES
- SECTION J - LIST OF ATTACHMENTS
- SECTION K - REPRESENTATION, CERTIFICATIONS, AND OTHER STATEMENT OF OFFERORS
- SECTION L - INSTRUCTION, CONDITIONS, AND NOTICES TO BIDDERS.

Continued ...

11. The Contractor shall begin performance <u>10</u> calendar days and complete it within <u>457</u> calendar days after receiving <u>FAR 52.211-10</u>	
<input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. The performance period is <u>4</u> <input checked="" type="checkbox"/> mandatory <input type="checkbox"/> negotiable. (See <u>FAR 52.211-10</u> .)	
12a. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES", indicate within how many calendar days after award in Item 12b.)	12b. CALENDAR DAYS <u>10</u>
13. ADDITIONAL SOLICITATION REQUIREMENTS:	
a. Sealed offers in original and <u>4</u> copies to perform the work required are due at the place specified in Item 8 by <u>1600</u> (hour) local time <u>01/14/2016</u> (date). If this is a sealed bid solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.	
b. An offer guarantee <input checked="" type="checkbox"/> is, <input type="checkbox"/> is not required.	
c. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.	
d. Offers providing less than <u>60</u> calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.	

OFFER (Must be fully completed by offeror)

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)


15. TELEPHONE NO. (Include area code)

16. REMITTANCE ADDRESS (Include only if different than item 14.)

CODE

FACILITY CODE

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

AMOUNTS 

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

19. ACKNOWLEDGEMENT OF AMENDMENTS

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

AMENDMENT NO.

DATE.

20a. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)

20b. SIGNATURE

20c. OFFER DATE

AWARD (To be completed by Government)

21. ITEMS ACCEPTED:

Continued...

22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

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

ITEM

25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO

☐ 10 U.S.C. 2304(c) ()☐ 41 U.S.C. 253(c) ()

26. ADMINISTERED BY

CODE

A09

27. PAYMENT WILL BE MADE BY

BIA NAVAJO 00009
301 WEST HILL ROOM 346
Contracting Office
Gallup NM 87301

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE☐ 28. NEGOTIATED AGREEMENT(Contractor is required to sign this document and return 4 copies to issuing office.)

Contractor agrees to furnish and deliver all items or perform all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations,

☐ 29. AWARD

(Contractor is not required to sign this document.)

Your offer on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

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

31a. NAME OF CONTRACTING OFFICER (Type or print)

Lynelle Benallie

30b. SIGNATURE

30c. DATE

31b. UNITED STATES OF AMERICA

31c. DATE

BY

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED
A16PS00021/000001

PAGE 3 OF 3

NAME OF OFFEROR OR CONTRACTOR

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	ESTIMATED PROJECT MAGNITUDE IS MORE THAN \$10,000,000.00.				

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SECTION B -- SUPPLIES OR SERVICES AND PRICES

B.1 INSTRUCTION TO BIDDERS

- a. The bid takes into consideration Amendments, called Addendum, to the plans and specifications, the receipt of which is acknowledged in the space provided on the reverse side of the Solicitation, Offer, and Award, Standard Form 1442 (Rev 4-85).
- b. Contract Award: Award will be made to the Offeror: (1) whose proposal is technically acceptable and (2) whose technical/cost relationship is the "best value" to the Government. While price is secondary to technical factors, it is an important element in the award decision. This means that award may not necessarily be made to the Offeror submitting the lowest proposed price nor to an Offeror proposing technical advantages that would appear to exceed those needed for successful performance of the work. Thus, the Government reserves the right to make technical/price trade-offs that are in the best interest, and best value to the Government.
- c. The bidders shall include in the bid items: (1) 5% Navajo Nation Business Activity Tax; (2) current tax rate for New Mexico Gross Receipts Tax; (3) bonds; (4) insurance; (5) all permits and fees required by BIA, State, Tribal, and Local municipalities. Failure to include these costs in bid item shall be considered non-responsive.

B.2 REQUIRED WORK

The proposed work consists of furnishing all labor, material, equipment and incidentals necessary for the Red Lake Dam Rehabilitation Project, Navajo, NM. The work consists of furnishing all labor, material, equipment, and incidentals necessary for the rehabilitation of the Red Lake Dam, Navajo, NM, in accordance with the specifications and design drawings.

The quantities listed for each item is estimated and the Unit Price is applicable to each as given in the Bid Schedule below. The final pay quantity measurements shall be rounded to the significant figures given in this bid schedule for the final pay estimate.

B.3 PROJECT LOCATION

The project is located at Red Lake Dam, Navajo, NM, McKinley County of New Mexico.

B.4 BID SCHEDULE

See next page.

B.5. Item No. 10901 Extra & Miscellaneous Work Authorized Under Section 109.02(m) or FP-96: The contractor shall not perform any of contingent sum work, until the Contracting Officer issues a contract modification authorizing performance of work in accordance with FAR Clause 52.243-04, Changes, and FAR Clause 52.243-05, Changes and Changed Conditions; and subject to availability of funds, FAR Clause 52.232-18, Availability of Funds.

The Contractor shall promptly notify the Contracting Officer, in writing, of subsurface or any physical conditions from those indicated in this contract or unknown unusual physical conditions at the site before proceeding with the work.

The change orders request shall be forwarded to the Contracting Officer by memorandum outlining the need and a justification for the change order. Upon receipt of a change order request, the Contracting Officer will request a cost proposal from the Contractor. All cost proposals shall be in detail and itemized, showing price breakdown in sufficient detail to permit an analysis of cost for material, labor, equipment, hours, taxes, insurance, bonds, overhead costs, profit, and complete description of work involved in the change order, including any time extension.

In an emergency situation, a telephone approval may be granted by the Contracting Officer, and immediately the Contractor shall follow through by submitting a written cost proposal to the Contracting Officer. The Contracting Office will issue a contract modification to authorize the work for the "emergency".

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B.6 SPECIAL NOTE

The Bidders are advised that the following activities may be performed under a limited "Notice to Proceed" (NTP) until such time as all the applicable permits, whether furnished by the government or required to submit by the Contractor are acquired, and the requirements reviewed with the selected contractor before a full NTP is issued.

Normally for the government furnished Clean Water Act permits 401 & 404 it will take up to 60 calendar days from award of contract to receive concurrence on the applications from the regulatory agencies. The Notice of Intent (NOI) for the National Pollution Discharge Elimination System NPDES 402 permit is applied for by both the Contractor and government on the USEPA website as shown in the contract specifications two weeks prior to actual construction taking place.

The Limited NTP will allow the following activities:

- Mobilization
- Setup of construction yard & offices
- Survey staking
- Development of the SWPPP, TTCP, QC Plan, Safety Plan, & Construction Schedule
- Implementation of the SWPPP
- Installation of the fencing
- QC lab setup & records management
- Acquisition and stockpiling of Materials
- Other activities as requested by the Contractor that DO NOT have any impact on the waters of the USA as determined by the government or other environmental concerns spelled out in the contract documents

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SECTION C -- DESCRIPTIONS AND SPECIFICATIONS

The proposed work consists of furnishing all labor, material, equipment and incidentals necessary for the rehabilitation of Red Lake Dam, Navajo, NM. The work consists of furnishing all labor, material, equipment, and incidentals necessary for the rehabilitation project of Red Lake Dam, in accordance with the design drawings and specifications.

SEE ATTACHED SPECIFICATIONS.

SEE ATTACHED DRAWINGS.

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SECTION E -- INSPECTION AND ACCEPTANCE

E.1 52.246-12 INSPECTION OF CONSTRUCTION

AUGUST 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.

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(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.

E.3 52.246-21 WARRANTY OF CONSTRUCTION

MARCH 1994

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government owned or controlled real or personal property, when that damage is the result of

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

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SECTION F -- DELIVERIES OR PERFORMANCE

F.1 52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK APRIL 1984

The Contractor shall be required to (a) commence work under this contract within ten (10) calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 457 (four hundred and fifty-seven) calendar days. The time stated for completion shall include final cleanup of the premises.

F.2 52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION SEPTEMBER 2000

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of \$1,000 for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

F.3 52.211-18 VARIATION IN ESTIMATED QUANTITY APRIL 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.

F.4 52.236-01 PERFORMANCE OF WORK BY THE CONTRACTOR APRIL 1984

The Contractor shall perform on the site, and with its own organization, work equivalent to at least fifteen percent (15%) 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.

F.5 52.242-14 SUSPENSION OF WORK APRIL 198

(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

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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.

F.6 52.246-12 INSPECTION OF CONSTRUCTION

AUGUST 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

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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.

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SECTION G -- CONTRACT ADMINISTRATION DATA

G.1 CONTRACT ADMINISTRATION - GOVERNMENT

1. All administrative questions shall be directed to:

Lynelle Benallie, Contracting Officer
 BIA-Navajo Regional Office, Branch of Acquisitions
 P. O. Box 1060, Gallup, New Mexico 87305
 Telephone: (505) 863-8404 Facsimile: (505) 863-8382
 Email: lynelle.benallie@bia.gov

2. All technical questions will be directed to:

Offerors/bidders may contact the Contracting Officer during the solicitation phase. All technical questions must be submitted in writing to the Contracting Officer via email at: lynelle.benallie@bia.gov. The Government's responses will be issued in an amendment to the Solicitation.

3. The Contracting Officer is the only official who can legally obligate the Government for expenditure of public funds.

G.2 CONTRACT ADMINISTRATION - CONTRACTOR

Designate a person whom the Government may contact during the period of the contract for prompt action on matters pertaining to the administration of the contract. Authorized Administrator is:

Name:
 Title
 Address
 City, State and Zip Code
 Telephone No:
 Email Address:

CONTRACTING OFFICER'S REPRESENTATIVE

1. The Contracting Officer will designate a Contracting Officer's Representative (COR) who will represent the Contracting Officer in the technical phase of the work. The COR's duties, responsibilities, and limitations of his authority will be set forth in a COR designation letter. A copy of the COR designation letter will be made available to the contractor.
2. The COR is not authorized to make any changes to the terms and conditions of this contract. Only the Contracting Officer is authorized to make changes to the contract with a properly signed written modification to the contract.
3. The Contracting Officer is the only official who can legally obligate the Government for expenditure of public funds.

G.4 INVOICE AND PAYMENT

Electronic Invoicing and Payment Requirements- Invoice Processing Platform (IPP) (April 2013)

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Payment requests must be submitted electronically through the U.S. Department of the Treasury's Invoice Processing Platform System (IPP).

"Payment request" means any request for contract financing payment or invoice payment by the Contractor. To constitute a proper invoice, the payment request must comply with the requirements identified in the applicable Prompt Payment clause included in the contract, or the clause 52.212-4 Contract Terms and Conditions – Commercial Items included in commercial item contracts. The IPP website address is: <https://www.ipp.gov>.

Under this contract, the following documents are required to be submitted as an attachment to the IPP invoice [*CO to edit and include the documentation required under this contract*]:

- *A copy of the contractor's invoice shall be included with the IPP invoice. If no invoice is attached, the Invoice will be rejected.*

The Contractor must use the IPP website to register access and use IPP for submitting requests for payment. The Contractor Government Business Point of Contact (as listed in SAM) will receive enrollment instructions via email from the Federal Reserve Bank of Boston (FRBB) prior to the contract award date, but no more than }- 5 business days of the contract award date. Contractor assistance with enrollment can be obtained by contacting the IPP Production

Helpdesk via email ippgroup@bos.frb.org or phone (866) 973-3131.

If the Contractor is unable to comply with the requirement to use IPP for submitting invoices for payment, the Contractor must submit a waiver request in writing to the Contracting Officer with its proposal or quotation.

(End of Local Clause)

G.6. POST AWARD EVALUATION OF CONTRACTOR PERFORMANCE

a. Contractor Performance Evaluations

Interim and final evaluations of Contractor performance will be prepared on this contract in accordance with FAR Subpart 42.15. The final performance evaluation will be prepared at the time of completion of work. In addition to the final evaluation, interim evaluation(s) will be prepared prior to exercising any option period. Interim and final evaluations will be provided to the Contractor as soon as practicable after completion of the evaluation. The Contractor will be permitted thirty days to review the document and to submit additional information or a rebutting statement. If agreement cannot be reached between the parties, the matter will be referred to an individual one level above the Contracting Officer, whose decision will be final. Copies of the evaluations, Contractor responses, and review comments, if any, will be retained as part of the contract file, and may be used to support future award decisions. b. Electronic Access to Contractor Performance Evaluations Contractors may access evaluations through a secure Web site for review and comment at the following address: <https://www.cpars.csd.disa.mil>

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SECTION H – SPECIAL CONTRACT REQUIREMENTS

H.1 CONSTRUCTION SERVICES

- (a) The Contractor shall provide supervision, labor, materials, equipment, tools, construction equipment, machinery, inspection, testing, start-up, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the work identified in the contract. The Contractor shall remove any personnel or subcontractors that the Government disapproves.
- (b) Only State-licensed General Contractors that have experience in the work related to the scope of work in the contract shall be allowed to perform the construction, which included or relates to: any Government owned or operated property, facility, structure, land, improvement or appurtenance. This includes Visitor Centers, Maintenance Facilities, Administrative Offices, Water Treat Facilities, Utilities, Roads, Employee Housing, Laboratories, Dams, Levees, Bridges, Hazardous Material Clean-Up, Recreation Structures and other structures deemed critical to the Government mission. The Contractor shall follow the Davis-Bacon Act which established the requirement for paying prevailing wages on public works projects.
- (c) The Contractor shall provide effective security for the work site, staging areas, and materials storage areas.
- (d) The Contractor shall at all times exercise complete and exclusive control over the means, methods, sequences, and techniques of construction. Any time work is being performed have an on-site Project Manager or Project Superintendent who is familiar with the work.
- (e) The Contractor shall schedule and coordinate construction activities so as not to unduly impact ongoing Government operations. Government operations have precedence over the construction activities.
- (f) The Contractor shall have the ultimate responsibility for Health and Safety on the project site at all times, from the issuance of the contract until final completion and acceptance of the project.
- (g) The Contractor is responsible for ensuring that all onsite activities, equipment, and facilities constructed by the Contractor, subcontractor, or supplier conform fully to the standard of the Department Labor, Occupational Safety and Health Administration (OSHA) 29 CFR 1926 and 1910: and DOI/BIA polices.

H.2 Requirements for Execution of Surety Bonds

Each surety company bond (performance and payment) which purports to have been executed by an agent or attorney-in-fact, for the corporate surety, is required to have submitted with it a power of attorney to the signatory agent or attorney-in-fact, and executed by the corporate surety upon a date reasonably approximate to the date to the bond. Such power of attorney shall in each instance be retained with the bond.

H.3 Modification Proposal - Cost Breakdown

The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer (CO). Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment,

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subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added, or changed. Any amount claimed for subcontractors shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification thereof shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

H.4 Changes

The contractor shall not perform any of contingent sum work, until the Contracting Officer issues a contract modification authorizing performance of work in accordance with FAR Clause 52.243-04, Changes.

The Contractor shall promptly notify the Contracting Officer, in writing, of subsurface or any physical conditions from those indicated in this contract or unknown physical conditions at the site before proceeding with the work.

The change orders request shall be forwarded to the Contracting Officer by memorandum outlining the need and a justification for the change order. Upon receipt of a change order request, the Contracting Officer will request a cost proposal from the Contractor. All cost proposals shall be in detail and itemized, showing price breakdown in sufficient detail to permit an analysis of cost for material, labor, equipment, hours, taxes, insurance, bonds, overhead costs, profit, and complete description of work involved in the change order, including any time extension.

In an emergency situation, a telephone approval may be granted by the Contracting Officer, and immediately the Contractor shall follow through by submitting a written cost proposal to the Contracting Officer. The Contracting Officer will issue a contract modification to authorize the work for the "emergency".

H.5 Contractor Safety Program Requirements

The Contractor shall establish a safety program, which shall include at a minimum the following requirements:

(a) Safety Program Submittal: Within 10 days following the awarding of a contract, the Contractor shall submit in writing to the Contracting Officer's Representative (COR) a proposed comprehensive safety program for approval. The Contractor's safety program shall detail policies, procedures and plans that will be implemented to ensure the safety and health of employees and visitors at the job site. The Contractor shall prepare a list of major hazards associated with the contract work and provide in the safety program means to minimize the hazards.

(b) Pre-Construction Safety Meeting: Representative of the Contractor shall meet with Contracting Officer's Representative and CO prior to the start of construction to review the safety program and discuss implementation of health and safety provisions pertinent to the work under contract. The Contractor should be prepared to discuss, in detail, the measures to be taken to control the hazards associated with the major phases of the work under contract. This meeting shall be devoted mainly to a discussion of the manner in which the Contractor intends to administer the health and safety program, delegation of responsibility for implementing the program, and a determination of what shall be presented in the written safety program.

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(c) Contractor Housekeeping Requirement: Good housekeeping, including provision and facilities for routine scrap removal, shall be maintained in all areas within the Contractor's scope of operation. Any and all garbage shall be stored and removed to an approved dump site as specified by the permitting Agency. The construction yard(s) shall be restored to their natural condition or better as required by the permitting requirements and in accordance with Tribal, State, and Federal law (i.e. applicable OSHA construction standards).

(d) Contractor Contamination Requirement: Handling, storage, and disposal of toxic materials of any nature shall be carried out in a manner so as not to contaminate or pollute public and/or private property, water supplies, rivers, lakes, reservoirs, streams, or the atmosphere. Disposal of all materials, including waste, garbage, and sewage, shall comply with all local, tribal, state, and federal regulations (i.e. Clean Air and Water Acts).

H.6 Hours and Days of Work

(a) Except in executive, administrative, and supervisory positions, no individual directly employed on the project may be permitted to work more than forty hours in any work week except as outlined below.

(b) The Contractor shall submit to the Contracting Officer the name and legal address of each foreman to be employed under this contract prior to his entrance on duty. Foremen will not be affected by the forty hour work week provisions stated above so long as their duties are strictly supervisory or administrative, but any foreman working with tools and performing the duties of a journeyman or mechanic or actually engaged in manual labor will be limited by the provisions above notwithstanding that they may work only a portion of the hours as a journeyman or mechanic or at manual labor.

(c) The performance time allowed under this contract is based on a four day work week, ten hours per day, Monday through Thursday or Tuesday through Friday. Accordingly, construction work requiring inspection by Government personnel generally will not be permitted on Saturdays or Sundays. Also, on those days recognized as legal holidays for Government employees, construction work requiring Government inspection generally will not be permitted.

(d) In situations which can be justified to the satisfaction of the Contracting Officer and his authorized representative, work in excess of forty hours per week and/or on the above mentioned weekends and holidays may be approved upon a two week written request (with justification) by the Prime Contractor. However, the contract contemplates holding overtime to an absolute minimum and bids should be based on this understanding.

H.7 Determination and Extension of Contract Time

(a) The calendar days, stated under Section F.1 - FAR 52.211-10, allowed for the performance of the contract is based upon the work to be performed and weather conditions that are normally anticipated in the area that may prevent work. Request for time extensions because of weather conditions shall not be granted except in the case of unusually severe weather or "Act of Nature" unanticipated by this contract.

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H.8 Payment to Contractor

See FAR Clause 52-232-27, Prompt Payment for Construction Contract. Payments to the Contractor shall be made within fourteen (14) calendar days after each invoice is approved by the CO. The invoice will not be processed until all material certifications and test results are received and approved. In addition, when applicable, all Monthly Construction Reports must be approved and current before payment may be processed.

H.9 Plans and Specifications

(a) Due to excessive costs incurred by the Government in printing, the Government will no longer be providing plans and specifications for its projects to suppliers and/or subcontractors.

(b) Any Prime Contractor bidding on Government contracts is responsible for providing its Subcontractors and Suppliers with information relating to their respective disciplines for cost proposals. Any misinterpretation or incorrect bids made to the Prime Contractor by the Subcontractor or Suppliers will not relieve the prime Contractor of his obligation to the contract or his bid proposal.

H.10 Availability of Records

The Contracting Officer and other authorized Government officials shall have access to all records of the Contractor and subcontractors relating to personnel, payrolls, invoices of materials, and any and all other data relevant to the performance of the contract.

H.11 Final Inspection, Substantial Completion, and Acceptance of Completed Work

Final inspection will be made by the Contracting Officer when requested and when the Contractor advises that all the materials have been furnished, all the work has been performed, and all the construction provided for by the contract has been completed in accordance with its terms. The Contractor shall be ready for final inspection in order that necessary arrangements can be made. If a minor portion of the materials to be furnished or work to be done or construction provided for by the Contractor has not been completed at time of final inspection, the work under the contract may be determined to be substantially complete and the Contractor advised by the Contracting Officer in writing of the date on which the work is determined to be substantially complete. On the date when all materials, work, or other requirements of the drawings, specifications, and contract are furnished or completed, acceptance will be given by the Contracting Officer. The Contractor will be advised in writing of the date the work is determined to be completed and accepted, thereby relieving the Contractor of further responsibility for that unit of the work, and until such acceptance the Contractor will be responsible for all work performed and materials delivered as provided in FAR Clause 52.236-7, Permits and Responsibilities.

H.12 Tribal Taxes, Requirements and/or Restrictions

(a) Special attention is called to FAR Clause 52.236-7, Permits and Responsibilities and FAR Clause 52.229-3, Federal, State, and Local Taxes. Offerors are responsible for contacting the tax authorities and tribe or tribal organization involved with regard to any requirements regarding state taxes, tribal taxes, royalties and/or other applicable tribal laws or ordinances. Any costs associated with this section shall be included in the contractor's bid.

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(b) Contractor is responsible for contacting the Office of the Navajo Tax Commission and the Office of Navajo Labor relations for tribal taxes and Indian Preference employment information and the New Mexico Department of Revenue for current tax rate.

H.13 Bond Requirements

- (a) Performance Bond – The amount of the performance bond shall be 100% of the original contract price.
- (b) Payment Bond – The amount of the payment bond shall be 100% of the original contract price.
- (c) Individual Surety – The bidders shall comply with FAR Clause 52.228-11, Pledges of Assets.
- (d) Third Party Indemnification Agreements. The bidder shall furnish a copy of any indemnification agreements that it entered into in order to secure the bonds required by the solicitation by the time set for bid opening. If an indemnification agreement was not required in order for the bidder to obtain the required bonds, an affidavit to that effect shall be provided by the surety along with the bid bond by the time set for bid opening. Failure to furnish a copy of the required indemnification agreement or the surety's affidavit may cause the bid to be rejected.

H.14 Subcontracting and Subcontractors

(a) Work to be Performed by Prime Contractor. The prime contractor shall perform on the site with its own force work amounting to not less than **fifteen (15%)** (FAR Clause 52.236-01, Performance of Work by Contractor) of the total amount of the work, exclusive of the cost of materials, supplies and administration to the prime contractor. If during the progress of the work, the contractor requests, in writing a reduction in such percentage, and the Contracting Officer determines that a reduction would not be to the Government's disadvantage, the percentage of the work required to be performed by the contractor may be reduced; provided, prior written approval of the reduction is obtained by the Contractor from the Contracting Officer.

(b) Selection of Subcontractors. Except as provided in DIAR Clause 1452.204-71, Indian Preference, the contractor and each subcontractor shall be free to select their subcontractors. Each subcontractor shall be capable of performing in a satisfactory manner, all work included in its subcontract. The contractor shall submit or require the submission of the following information to the Contracting Officer.

- (1) The name and address of each subcontractor.
- (2) A detailed description of the work covered by each subcontract.
- (3) A statement that the subcontractor has adequate resources and is capable of performing the work.

(c) Furnish Copies of Subcontracts. No subcontractor will be allowed to perform any work on the project site until the conditions in (b) above have been met and the contractor has completed and submitted SF-1413, Statement and Acknowledgment, to the Contracting Officer in accordance with FAR Clause 52.222-11, Subcontracts (labor Standards). The subcontract shall include therein, verbatim, paragraphs b(1) through b(11) of FAR Clause 52.222-26, Equal Opportunity, incorporated by reference in this contract. These requirements pertain to all subcontracts, no matter what tier or

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relationship they have to the prime contractor except that the FAR Clause 52.222-26, Equal Opportunity is not required to be included in subcontracts of \$10,000 or less.

(d) Contractor's Responsibility for Subcontractors. The contractor shall be responsible for the acts of all subcontractors and their employees when performing work at the project site, regardless of subcontractors' contractual relationship to the contractor. The contractor shall cause to be removed from the work at the project site any subcontractor or employee thereof whom the Contracting Officer, in writing, finds to be incompetent, careless, or otherwise objectionable. Failure of any subcontractor to complete the work described in its subcontract in a satisfactory manner, or without delay, will not excuse the contractor from any delay in the completion of the entire contract.

H.15 POST AWARD CONFERENCES – Firm Fixed Price Contracts

The Contracting Officer shall conduct monthly post award meetings with the contractor and the Contracting Officer's Technical Representative (COTR). Discussions at these meetings will center on the contractor's performance to determine if the contractor is meeting and performing in accordance with the contract terms and conditions. The Contracting Officer will ensure that minutes of the meetings are taken and copies provided to attendees.

H.16 Prohibition on Text Messaging and Using Electronic Equipment Supplied by the Government while Driving

Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving" was signed by President Barack Obama on October 1, 2009 (ref.: <http://edocket.access.gpo.gov/2009/pdf/E9-24203.pdf>). This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or – rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.

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SECTION I -- CONTRACT CLAUSES

I.1 52.252-02 CLAUSES INCORPORATED BY REFERENCE

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

Clause	Title	Date
1452.203-70	Restriction on Endorsements	July 1996
1452.210-70	Brand Name or Equal--Department of the Interior	July 1996
1452.215-70	Examination of Records by the Department of the Interior	April 1984
1452.224-01	Privacy Act Notification (July 1996) Deviation	July 1996
1452.236-70	Prohibition Against Use of Lead-based Paint	July 1996
52.202-01	Definitions	November 2013
52.203-03	Gratuities	April 1984
52.203-05	Covenant Against Contingent Fees	May 2014
52.203-06	Restrictions on Subcontractor Sales to the Government	September 2006
52.203-07	Anti-Kickback Procedures	May 2014
52.203-08	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	May 2014
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	May 2014
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	October 2010
52.203-13	Contractor Code of Business Ethics and Conduct	Oct 2015
52.204-01	Approval of Contract	December 1989
52.204-04	Printed or Copied Double-Sided on Recycled Paper	May 2011
52.209-06	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	Oct 2015
52.215-01	Instructions to Offerors – Competitive Acquisition	January 2004
52.215-02	Audit and Records--Negotiation	Oct 2010
52.215-08	Order of Precedence--Uniform Contract Format	October 1997
52.215-10	Price Reduction for Defective Cost or Pricing Data	August 2011
52.215-11	Price Reduction for Defective Cost or Pricing Data--Modifications	August 2011
52.215-12	Subcontractor Certified Cost or Pricing Data	October 2010
52.215-13	Subcontractor Certified Cost or Pricing Data--Modifications	October 2010
52.219-08	Utilization of Small Business Concerns	October 2014
52.219-14	Limitations On Subcontracting	November 2011
52.222-01	Notice to the Government of Labor Disputes	February 1997
52.222-03	Convict Labor	June 2003
52.222-09	Apprentices and Trainees	July 2005
52.222-10	Compliance with Copeland Act Requirements	February 1988
52.222-11	Subcontracts (Labor Standards)	May 2014
52.222-12	Contract Termination-Debarment	May 2014
52.222-23	Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction	February 1999
52.222-26	Equal Opportunity	April 2015
52.222-27	Affirmative Action Compliance Requirements for Construction	April 2015
52.222-35	Equal Opportunity for Veterans	October 2015
52.222-36	Affirmative Action For Workers with Disabilities	July 2014
52.222-37	Employment Reports on Veterans	October 2015

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52.223-03	Hazardous Material Identification And Material Safety Data	January 1997
52.223-05	Pollution Prevention and Right-to-Know Information	May 2011
52.223-06	Drug-Free Workplace	May 2001
52.223-09	Estimate of Percentage of Recovered Material Content for EPA Designated Items.	May 2008
52.223-10	Waste Reduction Program	May 2011
52.225-05	Trade Agreements	November 2013
52.225-10	Notice of Buy American Act Requirement - Construction Materials	May 2014
52.225-13	Restrictions on Certain Foreign Purchases	June 2008
52.226-01	Utilization of Indian Organizations and Indian-Owned Economic Enterprises	June 2000
52.227-04	Patent Indemnity-Construction Contracts	December 2007
52.228-02	Additional Bond Security	October 1997
52.228-05	Insurance - Work on a Government Installation	January 1997
52.228-11	Pledges of Assets	January 2012
52.228-12	Prospective Subcontractor Requests for Bonds	May 2014
52.228-13	Alternative Payment Protections	July 2000
52.229-03	Federal, State, and Local Taxes	February 2013
52.232-16	Progress Payments	April 2012
52.232-17	Interest	May 2014
52.232-18	Availability of Funds	April 1984
52.232-19	Availability of Funds for the Next Fiscal Year	April 1984
52.232-23	Assignment of Claims	May 2014
52.233-03	Protest after Award	August 1996
52.236-04	Physical Data	April 1984
52.236-19	Organization and Direction of the Work	April 1984
52.249-02	Termination for Convenience of the Government (Fixed-Price)	April 2012
52.249-10	Default (Fixed-Price Construction)	April 1984
52.252-04	Alterations in Contract	April 1984
52.252-06	Authorized Deviations in Clauses	April 1984

I.1 1450- HOMELAND SECURITY PRESIDENTIAL DIRECTIVE -12 AUGUST 2004
0016-001 (HSPD-12)

Contractor Personnel Security and Suitability Requirements

Performance of this contract requires contractor personnel to have a Federal government-issued personal identification card before being allowed unsupervised access to a DOI [facility and/or information system]. The Contracting Officer's Representative (COR) will be the sponsoring official, and will make the arrangements for personal identity verification and card issuance.

At least two weeks before start of contract performance, the Contractor will identify all contractor and subcontractor personnel who will require [physical and/or logical] access for performance of work under this contract. The Contractor must make their personnel available at the place and time specified by the COR in order to initiate screening and background investigations. The following forms, or their equivalent, will be used to initiate the credentialing process:

- OPM Standard Form 85 or 85P
- OF 306
- Fingerprint card (local procedures may require the fingerprinting to be done at a police station; in this case, any charges are to be borne by the contractor)

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- Release to Obtain Credit Information
- PIV card application (web-based)

Contractor employees are required to give, and to authorize others to give, full, frank, and truthful answers to relevant and material questions needed to reach a suitability determination. Refusal or failure to furnish or authorize provision of information may constitute grounds for denial or revocation of credentials. Government personnel may contact the contractor personnel being screened or investigated in person, by telephone or in writing, and the Contractor agrees to make them available for such contact.

Alternatively, if an individual has already been credentialed by another agency through OPM, and that credential has not yet expired, further investigation may not be necessary. Provide the COR with documentation that supports the individual's status.

During performance of the contract, the Contractor will keep the COR apprised of changes in personnel to ensure that performance is not delayed by compliance with credentialing processes. Cards that have been lost, damaged, or stolen must be reported to the COR and Issuing Office within 24 hours. Replacement will be at the contractor's expense. If reissuance of expired credentials is needed, it will be coordinated through the COR. At the end of contract performance, or when a contractor employee is no longer working under this contract, the Contractor will ensure that all identification cards are returned to the COR.

Before starting work under this contract, a National Agency Check (NAC) will be conducted to verify the identity of the individual applying for clearance. Upon successful completion of the NAC process, an identification card will be issued and access granted.

Simultaneously, a NAC with Inquiries (NACI) will be initiated to determine the individual's suitability for the position. If the NACI adjudication is favorable, nothing more needs to be done. If the adjudication is unfavorable, the credentials will be revoked. In the event of a disagreement between the Contractor and the Government concerning the suitability of an individual to perform work under this contract, DOI shall have the right of final determination.

This requirement must be incorporated into any subcontracts that require subcontractor personnel to have regular and routine unsupervised access to a Federally controlled facility for more than 180 calendar days or any unsupervised access to a Federally controlled Level 3 or 4 information system.

I.2 1452.204-70 RELEASE OF CLAIMS--DEPARTMENT OF THE INTERIOR JULY 1996

After completion of work and prior to final payment, the Contractor shall furnish the Contracting Officer with a release of claims against the United States relating to this contract. The Release of Claims form (DI-137) shall be used for this purpose. The form provides for exception of specified claims from operation of the release.

I.3 1452.226-70 INDIAN PREFERENCE APRIL 1984

(a) The Contractor agrees to give preferences to Indians who can perform the work required regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation for training and employment opportunities under this contract and, to the extent feasible consistent with the efficient performance of this contract, training and employment preferences and opportunities shall be provided to Indians regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation who are not fully qualified to perform under this contract. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts consistent with the efficient performance of this contract. The Contractor shall maintain such records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall also provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom, or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

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(c) If the Contractor is unable to fill its training and employment needs after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity."

(d) If no Indian organizations or Indian-owned economic enterprises are available for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, or labor surplus area concerns.

(e) As used in this clause:

(1) "Indian" means a person who is a member of an Indian Tribe. If the Contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of that Tribe.

(2) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451); and

(3) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

(4) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 668; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(f) The Contractor agrees to include the provisions of the clause including this paragraph (f) in each subcontract awarded under this contract.

(g) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interests of the Government.

I.4 1452.226-71

INDIAN PREFERENCE PROGRAM

APRIL 1984

(a) In addition to the requirements of the clause of this contract entitled "Indian Preference -- Department of the Interior," the Contractor agrees to establish and conduct an Indian preference program which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts and which will expand opportunities for Indians to receive preference for training and employment in connection with the work to be performed under this contract. In this connection, the Contractor shall --

(1) Designate a liaison officer who will:

i.maintain liaison with the Government and Tribe(s) on Indian preference matters; ii.supervise compliance with the provisions of this clause; and iii.administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not less than twenty (20) calendar days prior to commencement of work under this contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed, which sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate number and types of employees needed, the approximate dates of employment; the

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experience or special skills required for employment, if any; training opportunities available; and all other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. Consistent with the efficient performance of this contract, the Contractor shall give public notice of existing subcontracting opportunities by soliciting bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including --

i.a clear description of the supplies or services required including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms; ii.a statement indicating the preference will be given to Indian organizations and Indian-owned economic enterprises in accordance with Section 7(b) of Public Law 93-638; (88 Stat. 2205; 25 U.S.C. 450e(b)); iii.definitions for the terms "Indian organization" and "Indian-owned economic enterprise" as prescribed under the "Indian Preference -- Department of the Interior" clause of this contract; iv.a representation to be completed by the bidder or offeror that it is an Indian organization or Indian-owned economic enterprise; and

(v) a closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids from Indian organizations and Indian-owned economic enterprises, no responsible bid is received, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference -- Department of the Interior" clause of this contract. If one or more responsible bids are received, award shall be made to the low responsible bidder if the bid price is determined to be reasonable. If the low responsive bid is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference -- Department of the Interior" clause of the contract.

(5) Maintain written records under this contract which indicate:

i.the names and addresses of all Indians seeking employment for each employment position available under this contract; ii.the number and types of positions filled by (A) Indians and (B) non-Indians, and the name, address and position of each Indian employed under this contract; iii.for those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; iv.actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract; v.reasons why preference was not given to Indian firms as subcontractors or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract, and vi.the names and addresses of all Indian organizations and Indian-owned economic enterprises (A) contacted, and (B) receiving subcontract awards under this contract.

(6) The Contractor shall submit to the Contracting Officer for approval a semiannual report which summarizes the Contractor's Indian preference program and indicates (i) the number and types of available positions filled and dollar amounts of all subcontracts awarded to (a) Indian organizations and Indian-owned economic enterprises and (b) all other firms.

(7) Records maintained pursuant to this clause will be kept available for review by the Government until expiration of one (1) year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

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(b) For purpose of this clause, the following definitions of terms shall apply:

(1) The terms "Indian," "Indian Tribe," "Indian Organization, and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."

(2) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations on Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, (85 Stat. 688; 43 U.S.C. 1601 et seq.).

(3) "On or near an Indian Reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not hinder the Government's right to award contracts and to administer their provisions.

(d) The Contractor agrees to include the provisions of this clause including this paragraph (d) in each subcontract awarded under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interest of the Government.

(End of clause)

I.5 1452.228-70 LIABILITY INSURANCE

JULY 1996

(a) The Contractor shall procure and maintain during the term of this contract and any extension thereof liability insurance in form satisfactory to the Contracting Officer by an insurance company which is acceptable to the Contracting Officer. The named insured parties under the policy shall be the Contractor and the United States of America. The amounts of the insurance shall be not less than as follows:

- 1. Worker's compensation and employer's liability: \$1,000,000**
- 2. General Liability: \$500,000 each person and \$1,000,000 each occurrence**
- 3. Property Damage: \$3,000,000**

(b) Each policy shall have a certificate evidencing the insurance coverage. The insurance company shall provide an endorsement to notify the Contracting Officer 30 days prior to the effective date of cancellation or termination of the policy or certificate; or modification of the policy or certificate which may adversely affect the interest of the Government in such insurance. The certificate shall identify the contract number, the name and address of the Contracting Officer, as well as the insured, the policy number and a brief description of contract services to be performed. The contractor shall furnish the Contracting Officer with a copy of an acceptable insurance certificate prior to beginning the work.

(c) The contractor shall name the United States, Bureau of Indian Affairs, as the insured party(ties) on the liability insurance policy.

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I.6 52.204-07 SYSTEM FOR AWARD MANAGEMENT

JUL 2013

(a) Definitions. As used in this provision—

"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 means the 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 System for Award Management records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same concern.

"Registered in the System for Award Management (SAM) database" means that—

- (1) The Offeror has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see Subpart 4.14), into the SAM database; and
- (2) The offeror has completed the Core, Assertions, and Representations and Certification, and Points of contact sections of the registration in the SAM database;
- (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process.
- (4) The Government 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 SAM 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 SAM database.

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

(1) An offeror may obtain a DUNS number—

- (i) Via the internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or
- (ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

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(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).

(d) If the Offeror does not become registered in the SAM 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) Offerors may obtain information on registration at <https://www.acquisition.gov>.

I.6a 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.

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**I.7 52.222-04 CONTRACT WORK HOURS AND SAFETY STANDARDS MAY
ACT - OVERTIME COMPENSATION 2014**

(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 payment of the overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37).

(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 statute.

(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 Construction Wage Rate Requirements statute.

(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 may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of Clause)

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I.08 52.222-06 Construction Wage Rate Requirements

**MAY
2014**

(a) Definition.—"Site of the work"—

(1) Means—The *primary site of the work*. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any*. Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)

(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are

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considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) 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.

(c)

(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

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

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so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Construction Wage Rate Requirements statute 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)

I.09 52.222-07 WITHHOLDING OF FUNDS

MAY 2014

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 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)

I.10 52.222-08 PAYROLLS AND BASIC RECORDS

MAY 2014

(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 40 U.S.C. 3141(2)(B) (Construction Wage Rate Requirement statute)), 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 Construction Wage Rate Requirements, 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 40 U.S.C. 3141(2)(B), 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

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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, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347.pdf>. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.

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

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

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly 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

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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)

I.11 52.222-13 COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS MAY 2014

All rulings and interpretations of the Construction Wage Rate Requirements and related statutes contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

I.12 52.222-14 DISPUTES CONCERNING LABOR STANDARDS FEBRUARY 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.

I.13 52.222-15 CERTIFICATION OF ELIGIBILITY MAY 2014

(a) By entering into this contract, the Contractor certifies that neither it 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 40 U.S.C. 3144(b)(2) 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 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).

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

I.14 52.222-21 PROHIBITION OF SEGREGATED FACILITIES APRIL 2015

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

"Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

"Segregated facilities" 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, sexual orientation, gender identity, 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 sexes.

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“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html .

(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 the 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)

I.15 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION

OCT 2015

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

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4) such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

“Subcontract” means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

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

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“United States,” as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.*

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) *All new employees.*

(A) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract.* For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor

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shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirement of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts.* The contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) *Is for—*

(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,500; and

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(3) Includes work performed in the United States.

(End of Clause)

**I.16 52.225-11 BUY AMERICAN – CONSTRUCTION MATERIALS
UNDER TRADE AGREEMENTS**

MAY 2014

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

“Caribbean Basin country construction material” means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Commercially available off-the-shelf (COTS) item”—

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or 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

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(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

“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

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(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.

“Least developed country construction material” means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

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

“WTO GPA country construction material” means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.*

(1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.50-5(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows: _____ [Contracting Officer to list applicable excepted materials or indicate “none”]

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

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American statute 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 statute to a particular construction material would be impracticable or inconsistent with the public interest; or

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(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 Statute.

(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 statute 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 statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(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:

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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).]

(End of clause)

Alternate I (May 2014). As prescribed in 25.1102 (c)(3), add the following definition of "Bahrainian or Mexican construction material" to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

"Bahrainian, Mexican, or Omani construction material" means a construction material that—

- (1) . Is wholly the growth, product, or manufacture of Bahrain or Mexico; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.*

(1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except the Bahrain FTA, NAFTA, and the Oman FTA apply to the this acquisition. Therefore, the Buy American statute restrictions are waived for designated country construction materials other than Bahrainian, Mexican, or Omani construction materials.

(2) The Contractor shall use only domestic, or designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

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**I.17 52.225-12 NOTICE OF BUY AMERICAN ACT REQUIREMENT –
CONSTRUCTION MATERIALS UNDER TRADE
AGREEMENTS**

MAY 2014

(a) *Definitions.* “Commercially available off-the-shelf (COTS) item,” “construction material,” “designated country construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American--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 statute 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 statute 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 statute, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.*

(1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested--

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

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**I.18 52.228-15 PERFORMANCE AND PAYMENT BONDS--
CONSTRUCTION**

**OCTOBER
2010**

(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 \$150,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance Bonds (Standard Form 25).* The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds (Standard Form 25-A).* The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) *Additional bond protection.*

(i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) *Furnishing executed bonds.* The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) *Surety or other security for bonds.* The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register* or may be obtained from the:

U.S. Department of Treasury
Financial Management Service
Surety Bond Branch
3700 East West Highway, Room 6F01
Hyattsville, MD 20782

Or via the internet at <http://www.fms.treas.gov/c570/>.

(e) *Notice of subcontractor waiver of protection (40 U.S.C. 3133(c)).* Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

**I.19 52.232-05 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION
CONTRACTS**

MAY 2014

(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:

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(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

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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. 6305).

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(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.

I.20 52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS MAY 2014

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 subparagraph (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 shall be 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 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).

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(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 requirement.

(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 fund transfer (EFT) banking information.

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

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(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— System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management), 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 the 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

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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:

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(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 41 U.S.C. 7109 in effect at the time the Contractor accrues the obligation to pay an interest penalty.

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

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (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 --

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(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 subparagraph (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 subparagraph (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 subdivision (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 41 U.S.C. 7109 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 subparagraph (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 40 U.S.C. 3133, asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due

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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 41 U.S.C. 7109 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 United States 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.

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(l) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected contract line item or subline item, if applicable; and

(vi) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

I.21 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER- SYSTEM FOR AWARD MANAGEMENT

JULY 2013

(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 System for Award Management (SAM) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the SAM 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 SAM database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the SAM database; and any invoice or contract financing request shall be deemed not to be a proper

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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 SAM 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 SAM database.

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I.22 52.232-36 PAYMENT BY THIRD PARTY

MAY 2014

(a) *General.*

(1) Except as provided in paragraph (a)(2) of this clause, the Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(2) The Governmentwide commercial purchase card is not authorized as a method of payment during any period the System for Award Management (SAM) indicates that the Contractor has delinquent debt that is subject to collection under the Treasury Offset Program (TOP). Information on TOP is available at <http://fins.treas.gov/debt/index.html>. If the SAM subsequently indicates that the Contractor no longer has delinquent debt, the Contractor may request the Contracting Officer to authorize payment by Governmentwide commercial purchase card.

(b) *Contractor payment request.*

(1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall make payment requests through a charge to the Government account with the third party, at the time and for the amount due in accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor.

(2) When the Contracting Officer has notified the Contractor that the Governmentwide commercial purchase card is no longer an authorized method of payment, the Contractor shall make such payment requests in accordance with instructions provided by the Contracting Officer during the period when the purchase card is not authorized.

(c) *Payment.* The Contractor and the third party shall agree that payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not payments made by the Government and are not subject to the Prompt Payment Act or any implementation thereof in this contract.

(d) *Documentation.* Documentation of each charge against the Government's account shall be provided to the Contracting Officer upon request.

(e) *Assignment of claims.* Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract or the Assignment of Claims Act of 1940 (31 U.S.C. 3727, 41 U.S.C. 6305).

(f) *Other payment terms.* The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, that is not provided in the third party agreement referenced in paragraph (c) of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

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I.23 52.233-01 DISPUTES

MAY 2014

(a) This contract is subject to 41 U.S.C. chapter 71, Contract Disputes.

(b) Except as provided in 41 U.S.C. chapter 71, 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 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C. chapter 71. The submission may be converted to a claim under 41 U.S.C. chapter 71, 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 contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

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

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

(3) The certification may be executed by any person 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 41 U.S.C. chapter 71.

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

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(h) The Government shall pay interest on the amount found due and unpaid from

- (1) the date that the Contracting Officer receives the claim (certified, if required); or
- (2) the date that payment otherwise would be due, if that date is later, until the date of payment.

With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

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

I.24 52.236-02 DIFFERING SITE CONDITIONS

APRIL 1984

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of --

- (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or
 - (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
- (b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

I.25 52.236-03 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

APRIL 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;

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(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.

I.26 52.236-05 MATERIAL AND WORKMANSHIP

APRIL 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.

I.27 52.236-06 SUPERINTENDENCE BY THE CONTRACTOR

APRIL 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.

I.28 52.236-07 PERMITS AND RESPONSIBILITIES

NOVEMBER 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

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property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

I.29 52.236-08 OTHER CONTRACTS

APRIL 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.

I.30 52.236-09 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS

APRIL 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.

I.31 52.236-10 OPERATIONS AND STORAGE AREAS

APRIL 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.

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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.

I.32 52.236-11 USE AND POSSESSION PRIOR TO COMPLETION APRIL 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.

I.33 52.236-12 CLEANING UP APRIL 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.

I.34 52.236-13 ACCIDENT PREVENTION NOVEMBER 1991

(a) The Contractor shall provide and maintain work environments and procedures which will--

(1) Safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;

(2) Avoid interruptions of Government operations and delays in project completion dates; and

(3) Control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall--

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

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(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

I.37 52.236-17 LAYOUT OF WORK

APRIL 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.

I.38 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

FEBRUARY 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

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(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 therefore. 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.

I.39 52.236-26 PRECONSTRUCTION CONFERENCE

FEBRUARY 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.

I.40 52.242-13 BANKRUPTCY

JULY 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.

I.41 52.246-21 WARRANTY OF CONSTRUCTION

MARCH 1994

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

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(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government owned or controlled real or personal property, when that damage is the result of

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

I.42 52.248-03 VALUE ENGINEERING-CONSTRUCTION

OCTOBER 2015

(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.

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“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 (c)(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.

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(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submission.* The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) *Government action.*

(1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification 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.

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(g) *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 is the sole determiner of the amount of collateral savings.

(h) *Subcontracts.* The Contractor shall include an appropriate value engineering clause in any subcontract of \$70,000 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.

(i) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering -- Construction clause of contract _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of Clause)

I.43 52.253-01 COMPUTER GENERATED FORMS

JANUARY 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.

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I.44 52.232-40 Providing Accelerated Payments to Small Business Subcontractors MAY 2014

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

(End of clause)

I.45 52.236-15 Schedules for Construction Contracts

APRIL 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)

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SECTION J -- LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

J.1 Davis Bacon Wage Rates

- (a) NM150011 09/25/2015 NM11

J.2 Forms

- (a) Standard Form 24, Bid Bond
- (b) Standard Form 25, Performance Bond
- (c) Standard Form 25A, Payment Bond
- (d) Standard Form 1413, Statement and Acknowledgement
- (e) DI-137, Release of Claims

J.3. Section C.2 (Attachments)

- (a) See Attachment for Specifications
- (b) See Attachment for Drawings

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General Decision Number: NM150011 09/25/2015 NM11

Superseded General Decision Number: NM20140011

State: New Mexico

Construction Type: Heavy

Counties: Cibola, Colfax, Guadalupe, Harding, Los Alamos, McKinley, Mora, Quay, Rio Arriba, San Miguel and Union Counties in New Mexico.

HEAVY CONSTRUCTION PROJECTS

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/02/2015
1	09/25/2015

* ELEC0611-011 08/01/2015

CIBOLA, COLFAX, GUADALUPE, HARDING, MCKINLEY, MORA, QUAY, RIO ARRIBA, SAN MIGUEL, AND UNION COUNTIES

	Rates	Fringes
ELECTRICIAN		
Zone 1.....	\$ 29.70	10.24

ZONE 1: Mileage calculated from the main post office in the following towns: Albuquerque-40 miles, Belen-12 miles, Carrizozo-12 miles, Clovis-12 miles, Espanola-14 miles, Farmington-6 miles, Gallup-10 miles, Las Vegas-8 miles, Los Lunas-12 miles, Portales-12 miles, Ratan-6 miles, Roswell-12 miles, Ruidoso-12 miles, Santa Fe-10 miles, Tucumcari-6 miles.

ZONE 2: Extending up to 20 miles beyond Zone 1, EXCEPT ALBUQUERQUE, shall receive 9% above Zone 1 rate.

ZONE 3: Extending up to 30 miles beyond Zone 1, EXCEPT

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ALBURQUERQUE, shall receive 15% above Zone 1 rate.

ZONE 4: Extending more than 30 miles beyond Zone 1, EXCEPT
ALBURQUERQUE, shall receive 26% above Zone 1 rate.

* ELEC0611-013 08/01/2015

Los Alamos County

	Rates	Fringes
ELECTRICIAN.....	\$ 34.16	10.41

IRON0495-003 06/01/2014

	Rates	Fringes
IRONWORKER		
Structural and Reinforcing..	\$ 26.12	12.73

SUNM2009-005 09/14/2010

	Rates	Fringes
CARPENTER.....	\$ 22.26	6.20
LABORER: Common or General.....	\$ 13.26	0.35
LABORER: Flagger.....	\$ 10.90	0.00
OPERATOR: Backhoe.....	\$ 17.00	0.00
OPERATOR: Grader/Blade.....	\$ 18.79	2.35
OPERATOR: Loader (Front End)....	\$ 17.43	0.26
OPERATOR: Scraper.....	\$ 14.03	0.00
PLUMBER.....	\$ 26.27	7.69
TRUCK DRIVER: Dump Truck.....	\$ 11.90	0.00
TRUCK DRIVER: Water Truck.....	\$ 13.72	5.25

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

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

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

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Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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.

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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

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SECTION K -- REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

K.1 52.252-01 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):
<http://www.arnet/far.gov>

Clause	Title	Date
52.223-04	Recovered Material Certification	May 2008
52.236-28	Preparation of Proposals--Construction	October 1997

K.2 52.203-02 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

APRIL 1985

(a) The offeror certifies that --

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

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

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

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

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

(2) (i) Has been authorized, in writing, to act as an agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision _____ (insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization);

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

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

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

**K.3 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING
PAYMENTS TO INFLUENCE CERTAIN FEDERAL
TRANSACTIONS**

**SEPTEMBER
2007**

(a) Definitions. As used in this provision—"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c) Certification. The offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(d) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

K.4 52.204-03 TAXPAYER IDENTIFICATION

OCTOBER 1998

(a) Definitions.

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

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

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

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

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(d) Taxpayer Identification Number (TIN).

☐ TIN: _____.

☐ TIN has been applied for.

☐ TIN is not required because:

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

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

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

(e) Type of organization.

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

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

☐ Foreign government;

☐ International organization per 26 CFR 1.6049-4;

☐ Other _____.

(f) Common parent.

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

☐ Name and TIN of common parent:

Name _____

TIN _____

K.5 52.209-05 CERTIFICATION REGARDING RESPONSIBILITY MATTERS OCT 2015

(a)

(1) The Offeror certifies, to the best of its knowledge and belief, that --

(i) The Offeror and/or any of its Principals --

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(A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (if offeror checks "have", the offeror shall also see 52.209-7, if included in this solicitation); and

(C) Are ☐ are not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision; and

(D) Have ☐, have not ☐, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples.

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax

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because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The Offeror has ☐ has not ☐, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principal," for the purposes of this certification, means an officer; director; owner; partner; or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

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

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

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

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

(End of Provision)

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K.6 52.219-01 SMALL BUSINESS PROGRAM REPRESENTATIONS

OCT 2014

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

“Economically disadvantaged women-owned small business (EDWOSB) concern” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business concern eligible under the WOSB Program.

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

“Small disadvantaged business concern, consistent with 13 CFR 124.1002,” means a small business concern under the size standard applicable to the acquisition, that--

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by--

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States, and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

“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.

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“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.

“Women-owned small business (WOSB) concern eligible under the WOSB Program (in accordance with 13 CFR part 127),” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

(b)

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

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

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

(c) *Representations.*

(1) The offeror represents as part of its offer that it ☐ is, ☐ is not a small business concern.

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

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

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. *[Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(3) of this provision.]* The offeror represents as part of its offer that—

(i) It ☐ is, ☐ is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(4)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. *[The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: _____.]* Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

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(5) Economically disadvantaged women-owned small business (EDWOSB) concern. *[Complete only if the offeror represented itself as a women-owned small business concern eligible under the WOSB Program in (c)(4) of this provision.]* The offeror represents as part of its offer that--

(i) It ☐ is, ☐ is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(5)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. *[The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: _____.]* Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

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

(7) *[Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(6) of this provision.]* The offeror represents as part of its offer that it ☐ is, ☐ is not a service-disabled veteran-owned small business concern.

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

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

(ii) It ☐ is, ☐ is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(8)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. *[The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: _____.]* Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

(d) *Notice.*

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

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a business concern that is small, HUBZone small, small disadvantaged, service-disabled veteran-owned small, economically disadvantaged women-owned small, or women-owned small eligible under the WOSB Program in order to obtain a contract to be awarded under the preference programs established pursuant to section 8, 9, 15, 31, and 36 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall --

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- (i) Be punished by imposition of fine, imprisonment, or both;
- (ii) Be subject to administrative remedies, including suspension and debarment; and
- (iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of Provision)

Alternate I (Sep 2015). As prescribed in 19.309(a)(2), add the following paragraph (c)(9) to the basic provision:

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

☐ Black American.

☐ Hispanic American.

☐ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

☐ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, Republic of Palau, Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

☐ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

☐ Individual/concern, other than one of the preceding

K.7 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

FEBRUARY 1999

The offeror represents that--

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

(b) It ☐ has ☐ has not filed all required compliance reports; and

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

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SECTION L -- INSTRUCTIONS, CONDITIONS AND NOTICES TO BIDDERS

L.1 52.252-01 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):
<http://www.arnet/far.gov>

Clause	Title	Date
1452.215-71	Use and Disclosure of Proposal Information--Department of the Interior	April 1984
52.211-01	Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29	August 1998
52.232-13	Notice Of Progress Payments	April 1984
52.252-03	Alterations in Solicitation	April 1984
52.252-05	Authorized Deviations in Provisions	April 1984

L.2 1452.233-02 SERVICE OF PROTEST--DEPARTMENT OF THE INTERIOR (DEVIATION) JULY 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 BIA, Branch of Acquisition Operations, Navajo Region, P.O. Box 1060, 301 W. Hill Ave., Rm. 346, Gallup, NM 87301.

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

(c) A copy of the protest served on the Contracting Officer shall be simultaneously furnished by the protester to the Department of the Interior Assistant Solicitor for Procurement and Patents, 1849 C Street, NW, Room 6511, Washington, D.C. 20240.

L.3 52.204-06 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER JUL 2013

(a) Definition. Data Universal Numbering System (DUNS) number, as used in this provision, means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the identification number for Federal Contractors.

(b) 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

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offeror to establish additional System for Award Management records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same concern.

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

(1) An offeror may obtain a DUNS number—

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

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

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

(i) Company legal business 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)

L.4 52.215-01 INSTRUCTIONS TO OFFERORS--COMPETITIVE

JANUARY 2004

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

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

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

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

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

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

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

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

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

(i) The solicitation number;

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

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

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

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

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

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

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

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

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(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 pro-posed 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

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(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.

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(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.

L.5 52.216-01 TYPE OF CONTRACT

APRIL 1984

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

L.6 52.236-27 SITE VISIT (CONSTRUCTION)

**FEBRUARY
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 required to inspect the site where the work will be performed.

(b) A site visit will be scheduled soon. The notice will be posted as an amendment.

Point of Contact will be: Pearl Chamberlin, COTR, Telephone No. (505) 863-8393.

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SECTION M -- EVALUATION FACTORS FOR AWARD

M.1 SECTION M - EVALUATION FACTORS FOR AWARD

1.0 Introduction: This section outlines the criteria the Government will use in evaluating the offeror's capabilities and proposal. The Government will compare each offeror's capabilities and proposal elements against predetermined measures of merit related to the Government's requirement defined herein.

2.0 General Basis for Award: This is a competitive, best value, source selection that will be conducted in accordance with Federal Acquisition Regulation (FAR Part 15.3). In using this best value approach, the Government seeks to award to an offeror who gives the BIA the greatest confidence that it will best meet our requirements affordably. To arrive at a source selection decision, the Source Selection Authority (SSA) will integrate the source selection team's assessment of the evaluation factors (described below). While the Government evaluation team will strive for maximum objectivity, the source selection process by its nature is subjective and therefore professional judgment is implicit throughout the entire process. This may result in an award being made to a higher rated, higher priced offeror where the decision is consistent with the evaluation factors and the SSA reasonably determines that the technical superiority, and/or overall business approach, and/or superior past performance, of the higher priced offeror outweighs the cost difference.

3.0 Competitive range: The Government reserves the right to limit for purposes of efficiency, the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. If the contracting officer, decides that an offeror's proposal should no longer be included in the competitive range, the proposal shall be eliminated from consideration for award and written notice of the decision shall be provided to the unsuccessful offeror in accordance with FAR 15.503.

3.1 Discussions: To maximize the Government's ability to obtain best value, based on the requirement and the evaluation factors set forth in this RFP, it may be necessary to conduct discussions. If discussions are necessary due to perceived weaknesses or other issues, which must be addressed before award, they will be conducted with only those offerors determined to be within the competitive range. Discussions may be conducted either orally or in writing. The scope and extent of discussions are a matter of contracting officer judgment. The Government may make a final determination as to whether the offeror's proposal is acceptable or unacceptable solely on the basis of the initial proposal as submitted. Accordingly, offerors are advised to submit initial proposals which are full and clearly acceptable and without the need for additional information. Offerors may be restricted to a short turnaround (i.e., less than 24 hours) in responding to the contracting officer during any discussion period.

3.2 Final Proposal Revisions: If discussions are conducted, final proposal revisions will be required in determining the award of the contract resulting from this RFP. However, the Government reserves the right to award a contract without discussions or opportunity for proposal revisions, in which case, final proposal revisions will not be required. Offerors are advised that unsupported final proposal revisions may be penalized in the overall proposal evaluation, and an otherwise acceptable proposal could be placed in jeopardy.

3.3 Rejection of Unrealistic Offers: The Government may reject any proposal that is evaluated to be unrealistic on contract terms and conditions, or unrealistically high or low in price when compared to Government estimates, such that the proposal is deemed to reflect an inherent lack of competence or failure to comprehend the complexity and risks of the technical requirements.

3.4 Correction Potential of Proposals: The Government will consider throughout the evaluation, the "correction potential" of any deficiency or proposal inadequacy. The judgment of such "correction potential" is within the sole discretion of the Government. If an aspect of an offeror's proposal not meeting the Government's requirements is not considered correctable, the offeror may be eliminated from the competitive range. For a proposal to result in an awardable contract, the proposal must at least meet all technical

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requirements, conform to all required terms and conditions, and include all required certifications. Offerors are required to meet RFP requirements in addition to those identified as evaluation criteria to be eligible for award.

4.0 Contract Award: Award will be made to the Offeror: (1) whose proposal is technically acceptable and (2) whose technical/cost relationship is the "best value" to the Government. While price is secondary to technical factors, it is an important element in the award decision. This means that award may not necessarily be made to the Offeror submitting the lowest proposed price nor to an Offeror proposing technical advantages that would appear to exceed those needed for successful performance of the work. All evaluation factors other than cost or price, when combined, are significantly more important than cost or price. Thus, the Government reserves the right to make technical/price trade-offs that are in the best interest, and best value to the Government.

5.0 Evaluation Factors

Evaluation Factors:

Factor 1 - Technical Approach (30 points)

The technical approach should be in as much detail as the offeror considers necessary to fully explain the proposed technical approach. The technical proposal should reflect a clear understanding of the nature of the work being performed. The Red Lake Dam project is located within Navajo Indian Reservation lands. Logistics of transporting materials, equipment and personnel to the project sites is essential and must be carefully considered and planned.

- a. Describe how you plan to mobilize the equipment, personnel, and materials; and transport them to the project site.
- b. Describe the materials and equipment required to complete the Red Lake Dam construction work described.
- c. Describe how you plan to deliver material to the project site, and have the materials available throughout the construction process.
- d. Describe the tools and equipment required, and how you plan to deliver them to the project site before beginning work.
- e. Describe your construction schedule and how you plan to proceed with and process the construction work through completion.
- f. Describe how you will provide storage space and security for the materials delivered to the project site.
- g. Describe the method and criteria you plan to use to select qualified subcontractors/suppliers to ensure an appropriate level of experience and expertise for the project.

Factor 2 - Management Control (30 points):

1. Each Offeror shall submit a plan consisting of a narrative explanation of their proposed on-site approach to project management and coordination, including cost control measures on contract modifications and how they are tracked.
2. Each Offeror will be required to provide the relevant experience and knowledge of key individual(s) of the construction team who will be assigned directly to the project. One of the key individuals is the Project Superintendent, who must have at least 5 years of direct work experience in Heavy Dam construction. The Project Superintendent must have successfully completed at least five (5) projects with a similar or more complex scope for at least eighty (80%) percent of the total project term, in the project superintendent position.

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All projects must have been completed timely, within budget, and to the satisfaction of the owner. Provide resume.

Factor 3 - Past Performance (40 points):

Each offeror should provide with its offer by the date and time offers are due, five (5) references on the Form: Past Performance on Contracts Completed (see form attached under Section J, List of Documents, Exhibits and other Attachments. In addition, each offeror is required to obtain five (5) references written by former clients/owners of the Past Performance Relevancy Questionnaire (see form attached under Section J, List of Documents, Exhibits and other Attachments; should one of the references be a Federal agency/employee, then the completed form must be submitted directly to BIA, Branch of Acquisitions, by the date and time offers are due. This factor pertains to the offeror's quality of work and project management skills displayed on previously completed projects, including work coordination, contract compliance, timeliness, ability to control cost, and other related contract requirements. Ongoing projects should be at or near the eighty (80%) percent completion level to be considered for evaluation. In accordance with FAR 15.305(a)(2)(iv), firms with no relevant experience and/or past performance history will be evaluated under the same criteria with those firms with relevant experience or past performance. Both of the past performance forms referenced above will be used to evaluate the offeror's past performance. References must be capable of providing first hand information to substantiate the satisfactory completion of the offeror's past performance. References will be contacted on the responses annotated on the Past Performance Relevancy Questionnaire.

M.6 Points - Evaluation Criteria Elements:

The following sets forth the points of the evaluation criteria elements for which each Offeror will be evaluated:

Factor	Points
1 - Technical Approach	30
2 - Management Control	30
3 - Past Performance	40
Total Points	100

SOURCE SELECTION SENSITIVE WHEN COMPLETED

Offeror instructions for sending Past Performance Relevancy Questionnaire Form: Prepare and send the referenced questionnaire form to the owner for each of the five (5) references on the Past Performance on Contracts Completed. It is your responsibility to follow-up and to encourage your references to send in their questionnaire.

Cover Letter (See sample.) Suggested: Pre-addressed stamped envelope to be return to:

Lynelle Benallie, Contracting Officer
BIA, Branch of Acquisitions, Navajo Region
P.O. Box 1060
Gallup, NM 87305
Phone: 505/863-8404
Fax No.: 505-863-8382
Email: lynelle.benallie@bia.gov

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Memorandum for Past Performance References

Date:

To:

From:

SUBJECT: Past Performance Relevancy Questionnaire Form, RFP No. A13PS00333,
_____, (Name of Company)

1. The BIA Contracting Officer, Branch of Acquisitions, Navajo Region, is in the process of conducting past performance for Request for Proposal (RFP) No. A13PS00333, Alamo Highway Construction Project. In the RFP instructions, the BIA requested our company to provide references for similar type of contracts completed or currently in process with your organization. One of the award criteria includes the evaluation of the offeror's past performance on prior contracts and contracts currently in progress with your organization.
2. It is for that purpose that your comments are solicited. Please have the attached Past Performance Relevancy Questionnaire Form completed by the person(s) most familiar with the contractor's performance on subject contract. We request this be a joint endeavor between the Contracting Officer and Contracting Officer's Technical Representative, and/or other personnel should be contacted to obtain inputs for the completion of the attached questionnaire form. Evaluations should reflect an honest, straightforward, and objective evaluation of the contractor's performance based on objective facts.
3. As your knowledge is crucial to our evaluation of the company's past performance, we request you provide responses to all questions. Please provide narrative rationales as appropriate. Hand written responses, printed clearly, are sufficient. Any other comments you wish to provide are welcomed.
4. Your attention to this matter would be greatly appreciated. Please submit the questionnaire form directly to: BIA, Branch of Acquisitions, Navajo Region, P.O. Box 1060, Gallup, NM 87305 or fax to the Attention: Lynelle Benallie, (505)863-8404, as soon as possible, but not later than January 14, 2016.
5. As this questionnaire relates to an ongoing source selection once it is filled out, it should be handled as Source Selection Sensitive Information in accordance with FAR 3.104. The BIA will safeguard the information once it receives the questionnaire form, to include not releasing the names of any respondents outside the Source Selection Evaluation Organization.
5. If additional information is required, please contact: _____, at Phone No. _____, or email at _____.

//SIGNED//

Attachment(s)

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Past Performance Relevancy Questionnaire Form

Instructions to Owner: Complete the Past Performance Relevancy Questionnaire Form.

Past Performance Relevancy Questionnaire Form

RATING DESCRIPTIONS: Use the following descriptions as guidance in providing ratings.

<u>RATING</u>	<u>DEFINITION</u>
Exceptional (1)	Indicates the contractor's performance record within the area of evaluation <i>Exceeded</i> the contract contractual requirements.
Very Good (2)	Indicates the contractor's performance record within the area of evaluation <i>Met All</i> contractual requirements.
Satisfactory (3)	Indicates the contractor's performance record within the area of evaluation <i>Met Essentially All</i> contractual requirements.
Marginal (4)	Indicates the contractor's performance record within the area of evaluation <i>Met Some</i> of the contractual requirements. However, changes to the contractor's existing processes may be necessary in order to achieve contract requirements.
Unsatisfactory (5)	Indicates the contractor's performance record within the area of evaluation <i>Failed To Meet</i> the minimum Government requirements.
Unknown or Not Applicable (6)	The question does not apply. No performance record identifiable within the area of evaluation.

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Past Performance Relevancy Questionnaire Form

OFFEROR Name _____

Source selection sensitive when completed.

(1) Did the contractor demonstrate an ability to execute a large number of multiple projects in a highly compressed time frame?	1	2	3	4	5	6
REMARKS:						
(2) How responsive was the contractor's quality program in identifying, correcting, and preventing initial and recurring contract discrepancies?	1	2	3	4	5	
REMARKS:						
(3) How complete were the contractor's quality procedures, and how well do employees follow them?	1	2	3	4	5	6
REMARKS:						
(4) How well did the contractor manage the project, in terms of timely material delivery, accurate and timely submission of submittals, timely payment of subcontracts, and general business practices?	1	2	3	4	5	6
REMARKS:						
(5) Did the contractor accurately and timely provide progress status to the Government via progress schedule/critical path charts, etc? Did the contractor provide timely notices of delays/schedule revisions?	1	2	3	4	5	6
REMARKS:						
(6) Rate timeliness in meeting requirements and adhering to contract schedules (delivery/performance), taking into account all excusable delays including cooperation and attention to contract completion efforts.	1	2	3	4	5	6
REMARKS:						
(7) Did the contractor provide adequate, competent and qualified, management, key personnel and technical personnel capable of meeting contract requirements throughout the performance period of the contract?	1	2	3	4	5	6
REMARKS:						
(8) How well did the contractor work independent of Government guidance, oversight and assistance?	1	2	3	4	5	6
REMARKS:						
(9) How would you rate the contractor's business practices, customer relationship, and ability to successfully perform the work? Did the contractor demonstrate a reasonable and cooperative business relationship with the Government's Contract Management personnel?	1	2	3	4	5	6
REMARKS:						

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(10) How effective was the contractor in meeting Cost/Price performance targets and controlling contingencies (i.e. changes, etc.)?	1	2	3	4	5	6
REMARKS:						
(11) Rate the contractor's ability to manage subcontractors, and explain any subcontracting issues (positive or negative) that impacted the performance of your contract.	1	2	3	4	5	6
REMARKS:						
(12) Rate the adequacy of the contractor's environmental program, oversight, compliance, and management.	1	2	3	4	5	6
REMARKS:						
(13) Adequacy of Submittals. Were Submittals well researched and clearly identified the proposed item?	1	2	3	4	5	6
REMARKS:						
(14) How flexible, cooperative, and reasonable was the contractor in meeting the contract requirements, particularly when faced with short-notice on contract changes?	1	2	3	4	5	6
REMARKS:						
(15) Was the Project Superintendent consistently present on site when work was performed?	1	2	3	4	5	6
REMARKS:						
(16) How timely and effective were the contractor's responses to and resolution of Technical problems? Did the Project Superintendent have sufficient authority to make decisions or take actions during project performance?	1	2	3	4	5	6
REMARKS:						
(17) How effective was the contractor's safety program to ensure compliance with federal, state and local regulations? Did the contractor implement and follow their safety plan? Did they run a "safe" jobsite?	1	2	3	4	5	6
REMARKS:						

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(18) Applicable to Federal Contracts – How well did the contractor comply with applicable Federal Laws and Regulations such as Davis Bacon Act – timely payrolls and compliance; Drug-Free Workplace; Environmental Regulations and Use of Recovered Materials; Executive Order 13101?							
	1	2	3	4	5	6	
REMARKS:							
(19) How innovative was the contractor in performing the technical aspects of this contract and resolving problems?							
	1	2	3	4	5	6	
REMARKS:							
(20) How would you rate the Contractor's overall performance?							
	1	2	3	4	5	6	
REMARKS:							
(21) What were the contractor's top documented strengths, if any, in performing the contract requirements? REMARKS:							
(22) What were the contractor's top documented weaknesses, if any, in performing the contract requirements? REMAKRS:							
(23) OVERALL RATING: <input type="checkbox"/> Exceptional <input type="checkbox"/> Very Good <input type="checkbox"/> Satisfactory <input type="checkbox"/> Marginal <input type="checkbox"/> Unsatisfactory <input type="checkbox"/> Unknown or Not Applicable							
(24) Please Provide Any Additional Information You Feel Is Important Nor Covered Elsewhere:							

Thank you for your time and effort in responding to this survey. Be sure to return the Past Performance Relevancy Questionnaire Form to the BIA, Branch of Acquisitions, and NOT to the Contractor.

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Completed by:

Name: _____

Title: _____

Date Completed: _____

Name of Federal Agency: _____

Address: _____

Telephone No: _____

Fax No: _____

Final Contract Amount: _____

Brief Project Description: _____

Contract Performance Period: _____

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Form: Past Performance on Contracts Completed
(To be completed and returned with offer.)

Name of Contractor:

☐ Prime ☐ Sub-Contractor ☐ Other (Describe)

1. Name of Federal Agency: _____

Address: _____

Telephone No: _____

Fax No: _____

2. Contract No: _____

3. Final contract amount: \$ _____

4. Variances: Explain variances from original contract value to the final contract amount.

5. Original and modified period of performance:

From: _____ To: _____

7. Contracting Officer:

Name: _____

Address: _____

Telephone: _____ Fax: _____

8. Contracting Officer's Technical Representative:

Name: _____

Address: _____

Telephone: _____ Fax: _____

9. Contract status (If current, show percent complete. If terminated, explain why. If complete, so state.)

10. Description of the work performed (use additional page as necessary):