

SOLICITATION, OFFER, AND AWARD (Continued) <i>(Construction, Alteration, or Repair)</i>										
OFFER (Must be fully completed by offeror)										
14. NAME AND ADDRESS OF OFFEROR <i>(Include ZIP Code)</i>					15. TELEPHONE NO. <i>(Include area code)</i>					
CODE FACILITY CODE					16. REMITTANCE ADDRESS <i>(Include only if different than Item 14)</i> See Item 14					
					17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within _____ calendar days after the date offers are due. <i>(Insert any number equal to or greater than the minimum requirements stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)</i>					
AMOUNTS		SEE SCHEDULE OF PRICES								
18. The offeror agrees to furnish any required performance and payment bonds.										
19. ACKNOWLEDGMENT OF AMENDMENTS <i>(The offeror acknowledges receipt of amendments to the solicitation -- give number and date of each)</i>										
AMENDMENT NO.										
DATE										
20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER <i>(Type or print)</i>					20B. SIGNATURE			20C. OFFER DATE		
AWARD (To be completed by Government)										
21. ITEMS ACCEPTED:										
22. AMOUNT		23. ACCOUNTING AND APPROPRIATION DATA								
24. SUBMIT INVOICES TO ADDRESS SHOWN IN <i>(4 copies unless otherwise specified)</i>				ITEM	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO <input type="checkbox"/> 10 U.S.C. 2304(c) <input type="checkbox"/> 41 U.S.C. 253(c)					
26. ADMINISTERED BY			CODE		27. PAYMENT WILL BE MADE BY: CODE					
CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE										
<input type="checkbox"/> 28. NEGOTIATED AGREEMENT <i>(Contractor is required to sign this document and return _____ copies to issuing office.)</i> Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications or incorporated by reference in or attached to this contract.					<input type="checkbox"/> 29. AWARD <i>(Contractor is not required to sign this document.)</i> Your offer on this solicitation, is hereby accepted as to the items listed. This award commutes the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.					
30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN <i>(Type or print)</i>					31A. NAME OF CONTRACTING OFFICER <i>(Type or print)</i>					
30B. SIGNATURE			30C. DATE		TEL: EMAIL:			31B. UNITED STATES OF AMERICA BY		
								31C. AWARD DATE		

Section 00 10 00 - Solicitation, Contract Line Item Number (CLIN) Schedule

PRICE SCHEDULE

Ft Peck Butterfly Valve Rehab, Ft Peck, MT				FP79	
SECTION 00 10 00 Pricing Schedule					
CLIN	Description	Quantity	Unit Measure	Unit Price	Amount
BASE ITEMS					
0001	Mobilization and Demobilization	1	JOB	\$ _____	\$ _____
0002	Tunnel 2, Unit 4 and Unit 5 Penstock Ultrasonic Testing	1	JOB	\$ _____	\$ _____
0003	Provide New Tunnel 2 Drain Valves	1	JOB	\$ _____	\$ _____
0004	Refurbish Penstock Butterfly Valves – 2 Units	1	JOB	\$ _____	\$ _____
0005	Provide New Penstock Butterfly Valve Grease Lubrication System – 2 Units	1	JOB	\$ _____	\$ _____
0006	Provide New Penstock Butterfly Valve Operator, HPU and Controls – 2 Units	1	JOB	\$ _____	\$ _____
0007	Provide New Penstock Butterfly Valve Bypass System and Spiral Case Drain Valve – 2 Units	1	JOB	\$ _____	\$ _____
0008	Provide New Penstock Butterfly Valve Maintenance Platforms, Access Ladders, Hatches, and Guardrails - 2 units	1	JOB	\$ _____	\$ _____
0009	All Remaining Work	1	Job	\$ _____	\$ _____
SUB-TOTAL BASE (Items 0001 thru 0009)					\$ _____
OPTIONAL ITEMS					
0010	Penstock Paint Repairs - 10 Locations	1	Job	\$ _____	\$ _____
0011	Penstock Butterfly Valve Weld Repairs	Est. 300	In	\$ _____	\$ _____
TOTAL BASE + OPTIONS (Items 0001 thru 0011)					\$ _____

NOTES:

- 1 Prices must be entered for all items of the schedule. Total amounts submitted without prices being entered on individual items will be rejected. Additions will be subject to verification by the Government. In case of variation between the Job (lump sum) prices and the total amount, the lump sum prices will be considered the price submitted.
- 2 A modification to a proposal which provides for a single adjustment to the total amount submitted, should state the application of the adjustment to each respective lump sum price affected. If the modification is not so apportioned, the single adjustment will be applied to CLINs 0001 thru 0009.
- 3 See SECTION 00 21 00, INSTRUCTIONS TO OFFERORS (RFP) for evaluation of options. The Government may exercise an option by written notice to the Contractor commencing from the date of contract award thru the date the contract is closed, unless otherwise specified herein.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Mobilization and Demobilization FFP Mobilization and Demobilization FFP a. Measurement: Measurement will be made as a job for mobilizing and demobilizing all plant, equipment, fuel, supplies, materials, and personnel to and from Fort Peck Powerhouse. This CLIN applies to the Prime Contractor and all subcontractor mobilization and demobilization. b. Payment: Payment will be made in the Contract amount under CLIN 0001 at a rate of 60 percent for mobilization and 40 percent for demobilization as defined in Contract Clause 252.236-7004, PAYMENT FOR MOBILIZATION AND DEMOBILIZATION (DEC 1991). Submit a schedule of mobilization and demobilization costs prior to submitting the first request for payment. FOB: Destination MILSTRIP: W59XQG02807711 PSC CD: Z1KA	1	Job		

 NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002	Tunnel 2, Unit 4 and Unit 5 Penstock FFP	1	Job		
	Tunnel 2, Unit 4 and Unit 5 Penstock Ultrasonic Testing				
	a. Measurement: Measurement will be made as a job item for providing all equipment, operations, labor, and materials required to perform inspections of tunnel 2, unit 4, and unit 5 penstocks, as described in these specifications, as shown, and in accordance with all Federal, State, and local laws and regulations.				
	b. Payment: Payment will be made in the Contract amount under CLIN 0002, "Tunnel 2, Unit 4, and Unit 5 Penstock Ultrasonic Testing."				
	FOB: Destination				
	MILSTRIP: W59XQG02807711				
	PSC CD: Z1KA				

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003	New Tunnel 2 Drain Valve FFP Provide New Tunnel 2 Drain Valve	1	Job		
	a. Measurement: Measurement will be made as a job item for providing all equipment, operations, labor, materials, and incidental design engineering required to remove and dispose of the existing manual operated gate valve and piping, heating cable and thermostat at the Tunnel 2 location upstream of the bifurcation as shown; and installation and testing of provided new manually operated tunnel drain valves, piping and insulation, heating cable and thermostat, and associated systems and components, as described in these specifications, as shown, and in accordance with all Federal, State, and local laws and regulations.				
	b. Payment: Payment will be made in the Contract amount under CLIN 0003, "Provide New Tunnel 2 Drain Valves." FOB: Destination MILSTRIP: W59XQG02807711 PSC CD: Z1KA				

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004		1	Job		

Refurbish Penstock Butterfly Valves – 2
FFP

Refurbish Penstock Butterfly Valves – 2 Units

a. Measurement: Measurement will be made as a job item for providing all plant, labor, materials, equipment, operations, incidentals, and supervision associated with the design engineering, manufacture, shipping, demolition, installation, and painting required to refurbish and test the Unit 4 and Unit 5 Penstock Butterfly Valves as described in these specifications and in accordance with all Federal, State, and local laws and regulations. Includes but not limited to the refurbishment of existing penstock butterfly valve bronze disc seals, installation of new stainless steel mounting/adjusting hardware, o-rings, address coating deterioration and corrosion by sand blasting and re-coating, perform non-destructive examination (NDE) of butterfly valves after blast and prior to re-coating; new bearing carrier seals, bronze shaft bearings, thrust bearing, and associated systems as described in these specifications, as shown, and in accordance with all Federal, State, and local laws and regulations.

b. Payment: Payment will be made in the Contract amount under CLIN 0004, "Refurbish Penstock Butterfly Valves - 2 Units."

FOB: Destination
MILSTRIP: W59XQG02807711
PSC CD: Z1KA

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
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0005

1

Job

Provide New Penstock BV Grease

FFP

Provide New Penstock Butterfly Valve Grease Lubrication System – 2 Units

a. Measurement: Measurement will be made as a job item for providing all equipment, operations, labor, materials, and incidental design engineering required to remove and dispose of the existing grease lubrication system and provide new penstock butterfly valve grease lubrication system for Unit 4 and Unit 5 as described in these specifications, as shown, and in accordance with all Federal, State, and local laws and regulations.

b. Payment: Payment will be made in the Contract amount under CLIN 0005, "Provide New Penstock Butterfly Valve Grease Lubrication System Units."

FOB: Destination

MILSTRIP: W59XQG02807711

PSC CD: Z1KA

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0006		1	Job		

Provide New Penstock BV Operator, HPU
FFP

Provide New Penstock Butterfly Valve Operator, HPU and Controls – 2 Units

a. Measurement: Measurement will be made as a job item for providing all plant, labor, materials, equipment, operations, incidentals, and supervision associated with the design engineering, manufacture, shop assembly, factory testing, delivery to site, demolition of existing, installation and field testing of provided new Unit 4 and Unit 5 penstock butterfly valve operator, HPU and controls, as described in these specifications and in accordance with all Federal, State, and local laws and regulations. Includes but not limited to the new butterfly valve operator (quarter-turn hydraulic cylinder actuator) with integral mechanical locking device, hydraulic power unit (HPU) with offline oil filtering system, electrical panels, butterfly valve controls, and associated systems as described in these specifications, as shown, and in accordance with all Federal, State, and local laws and regulations.

b. Payment will be made in the Contract amount under CLIN 0006, "Provide New Penstock Butterfly Valve Operator, HPU and Controls - 2 Units."

FOB: Destination

MILSTRIP: W59XQG02807711

PSC CD: Z1KA

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0007		1	Job		

Bypass System and Spiral Case Drain
FFP

Provide New Penstock Butterfly Valve Bypass System and Spiral Case Drain
Valve – 2 Units

a. Measurement: Measurement will be made as a job item for providing all equipment, operations, labor, materials, and incidental design engineering required to remove and dispose of the existing motorized gate valve and bypass piping, and spiral case drain valve for Unit 4 and Unit 5; and installation and testing of provided new butterfly valve bypass system (motorized gate valve, manual isolation valve, bypass piping, absolute pressure switch, equalizing line pressure monitoring system, and bypass system controls), new manual operated spiral case drain valve, piping insulation, and associated systems and components for Unit 4 and Unit 5, as described in these specifications, as shown, and in accordance with all Federal, State, and local laws and regulations.

b. Payment: Payment will be made in the Contract amount under CLIN 0007, "Provide New Penstock Butterfly Valve Bypass System and Spiral n Valve - 2 Units."

FOB: Destination

MILSTRIP: W59XQG02807711

PSC CD: Z1KA

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0008	New Penstock Maintenance Platform FFP Provide New Penstock Butterfly Valve Maintenance Platforms, Access Ladders, Hatches, and Guardrails - 2 units	1	Job		
	<p>a. Measurement: Measurement will be made as a job item for providing all equipment, operations, labor, materials, parts, and incidentals for designing, fabricating, delivery to site, removal of existing platforms and ladders, and installation of new butterfly valve maintenance platforms, access ladders, and access hatch modifications, and new guardrails for butterfly valve hatches, for Unit 4 and Unit 5 penstock butterfly valves, as described in these specifications, as shown, and in accordance with all Federal, State, and local laws and regulations.</p> <p>b. Payment: Payment will be made in the Contract amount under CLIN 0008, "Provide New Penstock Butterfly Valve Maintenance Platforms, Hatches, and Guardrails - 2 Units."</p> <p>FOB: Destination MILSTRIP: W59XQG02807711 PSC CD: Z1KA</p>				

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0009	All Remaining Work FFP a. Payment: paid for under CLIN 0009 "All Remaining Work" on the bidding schedule, made on a progressive basis, based on the percentage of work completed. Price and payment shall constitute full compensation for all work and fees including but not be limited to labor, materials, mobilization, permits, associated and incidental to the completion of the required work according to the plans and specifications not covered on the Bidding Schedule in bid items number 0001 through number 0008. FOB: Destination MILSTRIP: W59XQG02807711 PSC CD: Z1KA	1	Job		

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0010 OPTION	Penstock Paint Repairs - 10 Locations FFP Penstock Paint Repairs - 10 Locationsa. Measurement: Measurement will be made as a job item for providing all equipment, operations, labor, and materials required to perform paint repairs of the tunnel 2, unit 4, and unit 5 penstock exteriors, as described in these specifications, as shown, and in accordance with all Federal, State, and local laws and regulations. b. Payment: Payment will be made in the Contract amount under CLIN 0010, "Penstock Paint Repairs - 10 Locations (Optional)." FOB: Destination MILSTRIP: W59XQG02807711 PSC CD: Z1KA	1	Job		

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0011	Penstock Butterfly Valve Weld Repairs	300	Inch		
OPTION	FFP				
	Penstock Butterfly Valve Weld Repairs - a. Measurement: Measurement will be made on a per linear inch of weld repair basis for providing all equipment, operations, labor, and materials required to perform weld metal excavation to sound base metal, non-destructive examination (NDE) to confirm indication removal, welding to original designed weld profile, pre and post heating requirements, and post weld NDE of repaired welds of the penstock butterfly valves, as described in these specifications and in accordance with all Federal, State, and local laws and regulations.				
	b. Payment: Payment will be made on a per linear inch of weld repair basis under CLIN 0011, "Penstock Butterfly Valve Weld Repairs (Optional)."				
	FOB: Destination				
	MILSTRIP: W59XQG02807711				
	PSC CD: Z1KA				

NET AMT

Section 00 20 00 - Instructions for Procurement

SPECIFICATION AND DRAWINGS

Fort Peck Butterfly Valve Replacement Specification and Drawings will be an attachment in SAM.GOV.

Section 00 21 00 - Instructions

INSTRUCTION FOR PROCUREMENT**SECTION 00 21 00
INSTRUCTIONS TO OFFERORS (RFP)****1. SOLICITATION RESTRICTIONS****1.1. GENERAL CONTRACTOR**

This solicitation is full and open to all businesses.

1.2. ESTIMATED CONSTRUCTION COST

The estimated construction cost of this project is between \$5,000,000 and \$10,000,000.

1.3. SUBMISSION, MODIFICATION, REVISION, AND WITHDRAWAL OF PROPOSALS

See FAR 52.215-1 INSTRUCTIONS TO OFFERORS-COMPETITIVE ACQUISITION, subparagraph "(c) Submission, modification, revision, and withdrawal of proposals." below for acceptable methods.

1.4. SUBMISSION DEADLINE

Contractors shall submit their proposals via email to the following individuals by no later than the date and time established in Block 13 of the Standard Form (SF) 1442, or Block 14 of the most recently issued SF 30 as applicable:

Daniel Monahan, Contract Officer: Daniel.D.Monahan@usace.army.mil

Lynne Reed, Contract Specialist: Lynne.d.Reed@usace.army.mil

Each email shall contain the following solicitation number in the subject line: **W912823R0009**

Files over 20 megabytes (MB) shall be separated into smaller file sizes and sent via separate emails with each email marked to identify which number the email is relative to the total number of emails submitted (i.e., "email one of four"). Once all the emails submitted have been received the Government will confirm receipt via responsive email.

Proposals received after the date and time stated within Block 13 of the SF1442, or Block 14 of the most recently issued SF 30 as applicable, will be considered late and will not be considered for award. To avoid rejection of a proposal, the offeror must make every effort to ensure its electronic submission is virus-free. Proposals, or portions thereof, submitted with the presence of a virus.

Do not assume submission will be instantaneous. File size and number of files submitted shall be considered. Contractor/Teammate/Subcontractor should allow adequate time for submission completion because the entire proposal (i.e., Contractor's submission and all teammate/subcontractor(s) independent submissions) must be received by the due date and time specified in Block 13 of SF 1442, or SF 30 as applicable.

2. COPIES OF SOLICITATION DOCUMENT AND AMENDMENTS

Copies of the solicitation and amendments are available by INTERNET ACCESS ONLY. All solicitation documents will be posted to the U.S. General Services Administration website at:

<https://sam.gov/>

It shall be the Offeror's responsibility to check the website for any amendments. The Offeror shall submit in the proposal all requested information specified in this solicitation. There will be no public opening of the proposals received as a result of this solicitation.

A list of interested vendors (potential offerors and subcontractors) is available on the sam.gov web site listed above (registration required).

3. OFFEROR'S QUESTIONS AND COMMENTS

3.1. SITE VISIT

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

A site visit is scheduled for **Thursday, 9 March 2023 09:00 AM MT**. Contractors interested in seeing the site need to make a reservation with **Tom Grant** by telephone (406) 526-3411 X4801 or by e-mail at thomas.d.grant@usace.army.mil.

3.2. BIDDER INQUIRY

Solicitation questions and/or comments must be submitted via Bidder Inquiry in ProjNet at: <https://www.projnet.org/projnet/>. All Bidder Inquiries must be submitted **no later than** ten (10) calendar days before the proposal due date in order for inquiries to be given consideration or actions taken prior to the receipt of offers. All timely questions and approved answers will be made available through ProjNet.

The Bidder Inquiry system is to be used to ask and receive answers to all non-proprietary questions. In the event the Bidder Inquiry method is unavailable and issue resolution is unsuccessful, inquiries may be submitted via email to the Contract Specialist listed below. Inquiries considered proprietary by the prospective vendor may also be submitted via email.

Contract Specialist – Primary POC: Lynne Reed
lynne.d.reed@usace.army.mil
402-995-2039 (Telephone)

To submit and review Bidder Inquiries, prospective offerors will need to use the Bidder Inquiry Key and instructions listed below. A prospective offeror who submits a comment/question will receive an acknowledgement of their comment/question via ProjNet email notification after an answer to the comment/question has been processed by the Government technical team.

Solicitation Number is: **W912823R0009**
Bidder Inquiry Key is: **C5VGHP-TEYRNC**

a. Registration for ProjNet Bidder Inquiry Access

If you are already registered, go to (b) Entering Bidder Inquiries in ProjNetBidder Inquiry System below.

1. From the ProjNet home page linked above, click on Quick Add on the upper right side of the screen.
2. Identify the Agency: This should be marked as USACE.
3. Key: Enter the Bidder Inquiry Key listed above.
4. Email: Enter the email address you would like to use for communication.
5. Click Continue
A page will then open saying that a user account was not found and will ask you to create one using the provided form.
6. Enter your First Name, Last Name, Company, City, State, Phone, Email, Secret Question, Secret Answer, and Time Zone.

Make sure to remember your Secret Question and Answer as they will be used from this point on to access the ProjNet system.
7. Click Add User.
Once this is completed you are now registered withinProjNet and are currently logged into the system.

b. Entering Bidder Inquiries in ProjNet Bidder Inquiry System

1. For future access to ProjNet, you will not be emailed any type of password. You will utilize your Secret Question and Secret Answer to log in.
2. From the ProjNet home page linked above, click on Quick Add on the upper right side of the screen.
3. Identify the Agency: This should be marked as USACE.
4. Key: Enter the Bidder Inquiry Key listed above.
5. Email: Enter the email address you used to register previously in ProjNet.
6. Click Continue. A page will then open asking you to enter the answer to your Secret Question.
7. Enter your Secret Answer and click Login. Once this is completed you are now logged into the system.

8. Follow online screen instructions to enter specific bidder inquiries for the project.
- c. Offerors are requested to review the specification in its entirety and review the Bidder Inquiry System for answers to questions prior to submission of a new inquiry.
- d. The call center operates weekdays from 8AM to 5PM U.S. Central Time Zone(Chicago). The telephone number for the Call Center is 800-428-HELP.

4. PLAN HOLDERS LIST

For viewing a list of interested vendors (i.e. Plan Holders List) and receiving notifications or email of changes regarding a solicitation, U.S. General Services Administration has these features available (<https://sam.gov/>). For this solicitation, go to <https://sam.gov/> and register as a vendor or enter username and password to login.

If you wish for General Contractors, Subcontractors, Suppliers, Plan Rooms or Print Shops to have the ability to contact you, click on "Add me to Interested Vendors" for the solicitation.

5. GENERAL DESCRIPTION OF WORK

Scope of project includes all work required for the Butterfly Valves Rehabilitation at Fort Peck Dam, MT. Work shall be in accordance with Request for Proposal documents issued with this solicitation.

6. PROPOSAL SUBMISSION REQUIREMENTS, EVALUATION, AND CONTRACT AWARD

The Contracting Officer has established a Source Selection Board to conduct an evaluation of each proposal received in response to this Solicitation. The evaluation will be based exclusively on the merits and content of the proposal and any subsequent discussion required. The identities of the SSB personnel are confidential, and any attempt by the proposers to contact these individuals is prohibited.

See Section 00 22 00, SUPPLEMENTARY INSTRUCTIONS, PROPOSAL SUBMISSION, AND EVALUATION.

7. FEDERAL, STATE AND LOCAL TAXES

It is the Contractor's responsibility to investigate applicable federal, state, and local taxes as well as any specific exemptions that may exist. This includes any applicable Value-Added Taxes (VAT), sales, use, and excise taxes. See General Conditions (Contract Clause) 52.229-3 FEDERAL, STATE, AND LOCAL TAXES.

- (1) Subcontracting plans are required to be approved prior to Contract Award. The approved subcontracting plan (to include goals) will become a material part of the contract.
- e. Failing to Submit an Acceptable Subcontracting Plan. An apparent successful offeror failing to submit a subcontracting plan which demonstrates a reasonable effort to meet the goals listed above

or provide an explanation why lesser goals are proposed (upon request), will be considered as non-responsive and not considered eligible for award of the contract.

- f. Questions or Assistance Needed in Developing Subcontracting Plan. For any questions or assistance needed in developing the subcontracting plan, contact the Contract Specialist or District's Deputy for Small Business (See paragraph: OFFEROR'S QUESTIONS AND COMMENTS. Please contact the Contract Specialist listed or the District's Deputy for Small Business your inquiries to 402-995-2919).

-- End of Section --

CLAUSES INCORPORATED BY REFERENCE

52.204-7	System for Award Management	OCT 2018
52.204-16	Commercial and Government Entity Code Reporting	AUG 2020
52.204-22	Alternative Line Item Proposal	JAN 2017
52.207-1	Notice Of Standard Competition	MAY 2006
52.211-2	Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST)	JUL 2021
52.215-1	Instructions to Offerors--Competitive Acquisition	NOV 2021
52.215-20	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data	NOV 2021
52.222-5	Construction Wage Rate Requirements--Secondary Site of the Work	MAY 2014
52.222-56	Certification Regarding Trafficking in Persons Compliance Plan.	OCT 2020
52.225-10	Notice of Buy American Requirement--Construction Materials	MAY 2014
52.232-38	Submission of Electronic Funds Transfer Information with Offer	JUL 2013
252.204-7019	Notice of NIST SP 800-171 DoD Assessment Requirements	MAR 2022
252.215-7008	Only One Offer	JUL 2019
252.215-7010	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data	JUL 2019

CLAUSES INCORPORATED BY FULL TEXT

52.204-20 Predecessor of Offeror (AUG 2020)

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

Commercial and Government Entity (CAGE) code means--

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity by unique location; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

Predecessor means an entity that is replaced by a successor and includes any predecessors of the predecessor.

Successor means an entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term “successor” does not include new offices/divisions of the same company or a company that only changes its name. The extent of the responsibility of the successor for the liabilities of the predecessor may vary, depending on State law and specific circumstances.

(b) The Offeror represents that it [] is or [] is not a successor to a predecessor that held a Federal contract or grant within the last three years.

(c) If the Offeror has indicated “is” in paragraph (b) of this provision, enter the following information for all predecessors that held a Federal contract or grant within the last three years (if more than one predecessor, list in reverse chronological order):

Predecessor CAGE code: ____ (or mark “Unknown”).

Predecessor legal name: ____.

(Do not use a “doing business as” name).

(End of provision)

52.216-1 TYPE OF CONTRACT (APR 1984)

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

(End of provision)

52.233-2 SERVICE OF PROTEST (SEP 2006)

(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 Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from **Daniel D. Monahan, C/O USACE Omaha Contracting Office, 1616 Capitol Ave., Omaha, NE 68102**

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

(End of provision)

52.236-27 SITE VISIT (CONSTRUCTION) (FEB 1995)

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting

the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) Site visits may be arranged during normal duty hours by contacting:

Name: Tom Grant
Email: thomas.d.grant@usace.army.mil
Address: 301 East Kansas St; Fort Peck MT 59223
Telephone: (406) 526-3411 X 4801
Date: Thursday, 9 March 2023
Time: 09:00 AM MT

(End of provision)

52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

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):

www.Acquisition.Gov

(End of provision)

52.252-3 ALTERATIONS IN SOLICITATION (APR 1984)

Portions of this solicitation are altered as follows:

N/A

52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (NOV 2020)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision.

(b) The use in this solicitation of any [DFARS](#) (48 CFR Chapter 2) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of provision)

252.211-7002 AVAILABILITY FOR EXAMINATION OF SPECIFICATIONS, STANDARDS, PLANS, DRAWINGS, DATA ITEM DESCRIPTIONS, AND OTHER PERTINENT DOCUMENTS (DEC. 1991)

The specifications, standards, plans, drawings, data item descriptions, and other pertinent documents cited in this solicitation are not available for distribution but may be examined at the following location:

www.SAM.GOV

(End of provision)

Section 00 22 00 - Supplementary Instructions

00 22 00 EVALUATION FACTORS**SECTION 00 22 00****PROPOSAL INSTRUCTIONS,
SUBMISSION REQUIREMENTS AND EVALUATION****1. WHO MAY SUBMIT**

This solicitation is for Full and Open competition.

All Offerors, including joint ventures, must be registered in the System for Award Management (SAM).

There will be no public opening. All proposals submitted will become, upon receipt, the property of the U.S. Government and will not be returned. After evaluation of proposals, the original will be retained for the official contract file. Electronic copies of the awardees' proposal will be submitted to the Field and Area Offices in support of their contract administration functions.

2. GENERAL REQUIREMENTS

In order to effectively and equitably evaluate all proposals, the Contracting Officer must receive information sufficiently detailed to clearly indicate compliance with the proposal submission requirements.

3. BIDDER INQUIRY

Reference Section 00 21 00, BIDDER INQUIRY, for bidder question instructions and procedures.

4. FORMAT SIZE OF SUBMISSIONS

All portions (other than an organization chart, Gantt charts or drawings (if provided)) shall be in 8-1/2" x 11" format.

5. PROPOSAL SUBMITTAL INSTRUCTIONS

In an effort to reduce paperwork and cost, all proposals shall be submitted electronically via email directly to:

Lynne Reed: Lynne.R.Reed@usace.army.mil

Daniel Monahan: Daniel.D.Monahan@usace.army.mil

All submissions shall be in Adobe PDF format with Optical Character Recognition (OCR) applied to all documents that will enable word searches to be conducted using Adobe-compatible PDF software. The two (2) volumes listed below shall be submitted as "SEPARATE" **single** files. Offerors may use compression utilities such as 7-Zip, WinZip or PKZip to reduce file size and facilitate transmission. Offerors are encouraged to send both files in the same email, if possible.

5.1. Proposal Submittals

Each submittal must contain Volume 1 and Volume 2 files named and structured as outlined below. Note the company name may be abbreviated.

5.1.1 Volume 1: Technical Proposal and Past Performance Information

FILE NAME: W9128F22R0049_Company Name_Volume_1_Technical_Proposal

CONTENTS:

Table 1- Proposal Submittals

Location	Description
Vol. 1. TAB A	Factor 1 – PAST PERFORMANCE
Vol. 1. TAB B	Factor 2 – TECHNICAL APPROACH - WORK PLAN

Vol. 1. TAB C	Factor 3 – PERSONNEL QUALIFICATIONS AND EXPERIENCE
Vol. 1. TAB D	Factor 4 – SMALL BUSINESS PARTICIPATION

5.1.2 Volume 2: Price Proposal, Cost Information and Representations, Certifications, and Other Statements of Offerors

FILE NAME: W9128F22R0049_Company Name_Volume_2_Price_Proposal

CONTENTS:

Table 2: Price Proposal Requirements

Location	Description
Vol. 2 TAB A	Factor 5 - PRICE (Standard Form 1442, Proposal Data Sheet And Contract Line Item Schedule)
Vol. 2 TAB B	Evidence of Bondability
Vol. 2 TAB C	Required Pre-Award Information

5.2. Late Submissions

For the purposes of determining whether the proposal was received “late”, in accordance with FAR 15.208, the date and time the file(s) are received via email by the Contract Specialist(s) will be the time and date the Government received the proposal.

6. SUBMISSION DEADLINE

Electronic proposals shall be received by the USACE Contracting Activity no later than the time and date specified in Block 13 of Standard Form 1442. Offers will NOT be publicly opened. Information concerning the status of the evaluation and/or award will NOT be available after receipt of proposals.

7. PROPOSAL CRITERIA

Offerors shall submit a proposal that meets or exceeds the minimum requirements of these Specifications through the replacement, modification or refurbishment of components identified in 00 10 00, PRICING SCHEDULE, of this solicitation.

8. EVALUATION OF PROPOSALS

8.1. Basis for Evaluation

All proposals and documentation which have been properly submitted will be evaluated. Proposals will be evaluated on the basis of the factors stated in the solicitation to select the responsible Offeror whose proposal is most advantageous to the Government. Because of the number of proposals anticipated, uniformity of all proposals is essential to assure fair and accurate evaluation. All proposals must comply with the instructions in the solicitation. Proposals that do not generally conform to the RFP requirements may be considered to have a “deficiency”, i.e., a defect that cannot be remedied by exchanges and/or permitted proposal revisions. If a proposal is suspected of having a deficiency, it will be brought to the immediate attention of the appropriate authority who will determine if there is a deficiency. If the determination is made that a deficiency exists, the proposal will not be evaluated further and will be eliminated from further consideration. The affected Offeror shall be promptly notified of the decision. Properly conforming proposals will be forwarded to the Source Selection Evaluation Board (SSEB) for evaluation. If, after award, the key personnel or subcontractors identified in the proposal are replaced, replacement personnel or subcontractors with similar skills and experience equal to those presented in the proposal shall be presented to the Contracting Officer for approval. The Contractor shall obtain the Contracting Officer’s written consent before making any substitutions for these designated personnel or subcontractors.

Information obtained from owners, contract administrators, or other points of contact provided by the Offeror may affect the evaluation rating given for the factors related to the information provided.

Evaluations will be conducted in accordance with the Tradeoff Process, FAR 15.101-1. Volume 1, Factor 1 will be rated in accordance with paragraph 8.3 (Past Performance Rating) of this section, and Factors 2, 3, and 4 will be rated in accordance with paragraph 8.4 (Combined Technical/Risk Rating) of this section using a color and adjectival methodology with a narrative assessment. Volume 2 (Factor 5 - Price) will be evaluated after consensus scoring Factors 1 through 4. Proposal evaluation is an assessment of the proposal and the Offeror's ability to perform the resultant contract successfully. Proposals will be evaluated to determine ratings supported by narratives, and to identify strengths, weaknesses, and deficiencies of the proposed approach in each proposal.

8.2. Evaluation Definitions

8.2.1 Strength

A substantive aspect, attribute, or specific item in the proposal that exceeds the solicitation requirements and enhances the probability of successful contract performance.

8.2.2 Significant Strength

An aspect of the proposal that has appreciable merit or appreciably exceeds specified performance or capability requirements in a way that will be appreciably advantageous to the Government during contract performance.

8.2.3 Weakness

A flaw in the proposal that increases the risk of unsuccessful contract performance.

8.2.4 Significant Weakness

A significant weakness in the proposal is a flaw that appreciably increases the risk.

8.2.5 Deficiency

A material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

8.2.6 Omission

A failure to provide information required by the solicitation and depending on the nature and extent of the omission it may be evaluated as a weakness, a significant weakness or a deficiency.

8.2.7 Clarification

Clarifications are limited exchanges between the Government and Offerors that may occur when award without discussions is contemplated. If award without discussions is anticipated, Offerors may be given the opportunity to clarify certain aspects of their proposals or to resolve minor or clerical errors.

8.2.8 Communications

Communications are exchanges between the Government and Offerors after receipt of proposals, leading to establishment of the competitive range.

8.2.9 Discussions

Discussions are negotiations conducted in a competitive acquisition and take place after establishment of the competitive range. Discussions are tailored to each Offeror's proposal and shall be conducted by the Contracting Officer with each Offeror within the competitive range.

8.3. Past Performance Rating

The past performance evaluation results in an assessment of the Offeror's probability of meeting the solicitation requirements. The past performance evaluations result in two (2) ratings: relevancy and overall confidence. The past

performance evaluation considers each offeror's demonstrated recent and relevant record of performance in design, manufacturing, and installation/construction activities that are needed to meet the contract's requirements. The Past Performance factor submission requirements and the method that the Government will use to evaluate the Offeror's past performance is detailed in Factor 1 -Past Performance description below.

There are three (3) aspects to past performance: recency, relevancy (including context of data), and quality (including general trends in contractor performance and source of information). While relevancy is also evaluated individually, all past performance aspects will be used to develop an overall confidence assessment rating for the Past Performance factor.

As an example of a past performance rating, a proposal evaluated as meeting the solicitation past performance criteria may be assessed ratings of "Relevant" and "Satisfactory Confidence."

8.3.1 Recency

The first aspect is to evaluate the recency of the Offeror's past performance. With respect to recency, more recent past performance will typically be a stronger predictor of future success and have more influence on the past performance confidence assessment than less recently completed projects. Recency criteria related to this solicitation is outlined in the Past Performance Submission Requirements section.

8.3.2 Relevancy

The second aspect is to determine how relevant a recent effort accomplished by the Offeror is to the work required by this solicitation. The relevancy aspect focuses on evaluating the applicability of the Offeror's previous work in relation to the solicitation requirements. Consideration shall be given to the features of an Offeror's contract history that best demonstrates the Offeror's ability to satisfy the current procurement requirements. Common aspects of relevancy include similarity of service/support, complexity, dollar value, contract type, and degree of subcontract/teaming. There are four (4) levels of relevancy as shown in the Table below.

Rating	Definition
Very Relevant	Present/past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires.
Relevant	Present/past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires.
Somewhat Relevant	Present/past performance effort involved some of the scope and magnitude of effort and complexities this solicitation requires.
Not Relevant	Present/past performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires.

8.3.3 Quality

The third past performance aspect is quality. The Quality evaluation will examine how well Offerors have performed on previous projects considering such criteria as workmanship, timeliness, safety, customer service, adherence to budget, subcontractor management (timely payment to subs or suppliers), relations between owner and contractor, as well as the level of support provided for As-built documentation, O&M manuals, training, correcting construction errors, and warranty work. The Government will consider the currency and relevance of the information, source of the information, context of the data, and general trends in contractor performance. The Offeror will be rated on its own performance. The Government may ask for Owners/References.

The past performance information required in this solicitation shall be provided by the Offeror. Past performance information may also be obtained from questionnaires. At the Government's discretion, past performance information shall be obtained from any other sources available to the Government, to include, but not limited to, the Contractors Performance Assessment Reporting System (CPARS), Federal Awardee Performance and Integrity Information System (FAPIS), Electronic Subcontract Reporting System (eSRS), or other databases; interviews with Program Managers, Contracting Officers, and Fee Determining Officials; and the Defense Contract Management Agency.

8.3.4 Performance Confidence Assessment

A final performance confidence assessment rating will be based on the evaluation of recent and relevant past performance information and the assessment of the quality of past performance on prior contract efforts. The Government will review the past performance information to determine the quality and usefulness as it applies to the performance confidence assessment. In conducting a performance confidence assessment, each offeror shall be assigned one of the ratings using the Table below.

Rating	Description
Substantial Confidence	Based on the Offeror's recent/relevant performance record, the Government has a high expectation that the Offeror will successfully perform the required effort.
Satisfactory Confidence	Based on the Offeror's recent/relevant performance record, the Government has a reasonable expectation that the Offeror will successfully perform the required effort.
Neutral Confidence	No recent/relevant performance record is available, or the Offeror's performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned. The Offeror may not be evaluated favorably or unfavorably on the factor of past performance.
Limited Confidence	Based on the Offeror's recent/relevant performance record, the Government has a low expectation that the Offeror will be able to successfully perform the required effort.
No Confidence	Based on the Offeror's recent/relevant performance record, the Government has no expectation that the Offeror will be able to successfully perform the required effort.

For Past Performance, an Unknown Confidence (Neutral) rating will be awarded when no past performance records are available. Per Federal Acquisition Regulation (FAR) 15.305(a)(2)(iv), "In the case of an Offeror without a record of relevant past performance or for whom information on past performance is not available, the Offeror may not be evaluated either favorably or unfavorably on past performance." On the recommendation of the Source Selection Advisory Council, the Source Selection Authority may determine that a "Substantial Confidence" or "Satisfactory Confidence" past performance rating is rated more favorably than a "Neutral Confidence" past performance rating in a best value tradeoff as long as the determination is consistent with stated solicitation criteria.

8.4. Combined Technical/Risk Rating

The application of a scale of colors and adjectival description will be used in conjunction with narrative to denote the degree to which the proposal has met the standard for a non-cost factor. Ratings will be applied at the factor and subfactor level, as appropriate for this solicitation. If, at any factor or subfactor level, an Offeror's proposal is evaluated as not meeting a minimum requirement (that is, below the level of "Marginal"), this fact must be included in the rating and narrative assessment at that level and at the factor level. Therefore, an unacceptable rating at any level may be carried to the factor level. The following ratings will be used to evaluate Factors 2, 3, and 4:

Combined Technical/Risk Ratings

Color	Rating	Description
Blue	Outstanding	Proposal demonstrates an exceptional approach and understanding of the requirements and contains multiple strengths, and/or at least one significant strength, and risk of unsuccessful performance is low.
Purple	Good	Proposal indicates a thorough approach and understanding of the requirements and contains at least one strength, or significant strength, and risk of unsuccessful performance is low to moderate.

Green	Acceptable	Proposal meets requirements and indicates an adequate approach and understanding of the requirements, and risk of unsuccessful performance is no worse than moderate.
Yellow	Marginal	Proposal has not demonstrated an adequate approach and understanding of the requirements, and/or risk of unsuccessful performance is high.
Red	Unacceptable	Proposal does not meet requirements of the solicitation, and thus, contains one or more deficiencies and is unawardable, and/or risk of unsuccessful performance is unacceptably high.

9. EVALUATION FACTORS FOR AWARD

Evaluation of the factors listed below will be basis for award. The requirements specified in the solicitation are considered minimum requirements. A more favorable evaluation rating may be given for exceeding the minimum requirements. *Note: Volume 1 Factors level of importance are noted below. Volume 2 (Price) is significantly less important to all of the combined Factor elements contained in Volume 1.*

Basis for Award – See table below for relative importance of selection factors.

VOLUME 1 – TECHNICAL FACTORS

Factor/ Subfactor	Location	Description	Relative Importance
FACTOR 1	Vol. 1. TAB A	PAST PERFORMANCE	Most Important Factor
FACTOR 2	Vol. 1. TAB B	TECHNICAL APPROACH - WORK PLAN	2 nd Most Important Factor (less important than Factor 1)
FACTOR 3	Vol. 1. TAB C	PERSONNEL QUALIFICATIONS AND EXPERIENCE	Equal to Factor 2
FACTOR 4	Vol. 1. TAB D	SMALL BUSINESS PARTICIPATION	Significantly less important than Factors 1-3

VOLUME 2 – PRICE AND PRO FORMA INFORMATION

Factor/Subfactor	Location	Description	Relative Importance
FACTOR 5	Vol. 2 TAB A	PRICE (Standard Form 1442, Proposal Data Sheet And Contract Line Item Schedule)	Least Important Factor. All evaluation factors other than price, when combined, are considered significantly more important than Price.

Note: An “Unacceptable” evaluation rating for any factor, or combination of different factors, may cause the proposal to be evaluated as “Unacceptable”. Volume 2 - Price will be evaluated in accordance with the requirements listed in paragraph 14, Volume 2, Factor 5 - PRICE.

9.1. VOLUME 1 - PROPOSAL REQUIREMENTS AND SUBMISSION FORMAT

Offerors shall submit the original of their Volume 1 file containing the following factors:

- Factor 1 – Past Performance
- Factor 2 – Technical Approach – Work Plan
- Factor 3 – Personnel Qualifications and Experience
- Factor 4 – Small Business Participation

9.2. VOLUME 2 - PRICE AND PRO FORMA INFORMATION

In the Volume 2 file, Offerors shall submit their price proposal along with the other information requested in Vol 2 - Price Submission Requirements.

Volume 2 shall include a cover letter stating that the proposal complies completely with all terms, conditions, and specifications contained in the solicitation. A proposal that does not comply with all terms, conditions, and specifications in the solicitation will be automatically rejected and not considered for award.

Volume 2 shall contain the Solicitation/Contract Form and Pricing Schedule (Section 00 10 00), Representations, Certifications and Other Statements of Offerors (Section 00 45 00), Pre-Award Survey Information and Small Business Information.

Please Note: The Government will not pay for the provision of any information nor compensate any Offeror for the development of the required information outlined in the solicitation required for inclusion in the Offeror's proposal.

All proposals shall contain the information stated herein. Proposal clarity, organization (as defined in this solicitation) and cross-referencing is mandatory. No material (information not part of the proposal) shall be incorporated by reference.

Note: Offerors that do not want the data submitted below disclosed by the Government must follow the procedure specified in Section 00 21 00 INSTRUCTIONS TO OFFERORS—COMPETITIVE ACQUISITION. Please note, portions of the winning proposal will be incorporated into the contract and are subject to disclosure notwithstanding restrictive markings.

10. FACTOR 1 – PAST PERFORMANCE

This factor is designed to verify the past performance of the Offeror having been regularly engaged in mechanical industrial installations, including hydropower facilities, similar in nature to this project. Emphasis should also be placed on demonstrating successful work history of planning and executing work on existing systems while minimizing outages.

10.1. Submission Requirements

10.1.1 Project Narratives

The Offeror should submit a minimum of three (3) and a maximum of five (5) project narratives for work completed or substantially complete within the past ten (10) years that best illustrates the Offeror's design, manufacturing, and installation/construction experience on projects of similar function, scope, complexity, and size as this project. Substantially complete is defined as being 50% construction progress completed (fully designed and at least 50% construction progress completed) by the date that proposals are due. If an offeror submits a project that it represents as "substantially complete," the offeror must reasonably explain why the project is considered at least 50% construction progress complete. If an Offeror submits an ongoing project without providing an accompanying reasonable explanation that explains how the project is at least 50% complete, the Government reserves the right to reject the project. No more than two "substantially complete" projects may be submitted by an Offeror.

The definition of "Similar" work is outlined below in paragraph 10.1.1.2. Each project narrative shall be no more than three (3) pages detailing the project and providing specifics as noted herein.

A maximum of five (5) projects will be evaluated. If an offeror disregards these instructions and submits more than five projects, only the first five (5) projects will be evaluated. Each project must have involved at least one or more of these three major project phases: design, manufacture, or installation/construction of projects of similar function, scope, complexity, and size as this project. NOTE: Although each project submitted need not demonstrate experience in all three major project phases (design, manufacture, and installation/construction), the Offeror's Factor 1 proposal in its totality must demonstrate the Offeror has experience in all three major project phases: design, manufacture, and installation/construction of projects of similar function, scope, complexity, and size as this project. Offerors should

describe each project with enough detail to ensure that the Government can meaningfully assess the projects the evaluation criteria described in the RFP.

If the past performance of a subcontractor is used to meet the minimum requirements, no more than three (3) of the submitted narratives should demonstrate subcontractor past performance. At least two projects must demonstrate prime contractor past performance.

Contractor shall provide a copy of the Joint Venture agreement if offeror proposes to use a Joint Venture. Project narratives will include the following information:

- a. Contract number and Offeror's and/or major subcontractor's specific role in the project.
- b. Project name.
- c. Project cost.
- d. Location.
- e. Description of work performed demonstrating Electrical & Mechanical Industrial Installation experience. Include size, ratings, and number of units.
- f. Specific mechanical and electrical installation experience relating to the project.
- g. Date of completion.
- h. Name of customer, agency, or firm.
- i. Point of Contact (POC) information for the customer, agency, or firm, including name, title, email, and telephone number.
- j. Include details to address:
 - The facility type (dam, hydropower plant, manufacturing, etc.) where the work was performed?
 - Identify whether the valve, turbine, gate, or other hydraulic steel structure (HSS) was refurbished in place, refurbished off-site or replaced. If refurbished, what components were replaced and what surfaces were reworked?
 - Were controls replaced? If so, were they replaced in-kind, or a new control system scheme designed, and equipment provided?
 - Was the valve, turbine, gate/HSS operator replaced? If so, with what type of operator?
 - Was welding performed on the valve, turbine, gate/HSS in place?
 - If seals were refurbished or replaced, what material was used (bronze leaf, elastomeric, etc.)?
 - Were bronze bearings refurbished or replaced?
 - If project included valve work, include the following:
 - Valve type (butterfly, spherical, etc.).
 - State the nominal diameter of the valve .
 - Water velocity through the valve (ft/sec).
 - Was valve or gate sealing system successful in sealing when closed?
 - Was valve or gate sealing system successful in remaining retained under flow?
 - Was the project successful with a functional system returned to service?
 - Were there any project delays or other aspects related to the job that resulted in unscheduled downtime for the equipment?
 - Has all post work field testing been completed?

10.1.1.1 Letter of Commitment

Offerors may use the past performance of major subcontractors to demonstrate experience in any of the three major project phases, however **a binding Letter of Commitment between the prime and subcontractor is required and must be included for that experience to be considered, and contain the following:**

1. A statement of commitment as to the performance and utilization of the identified entity's resources on the project.
2. Signatures of both the Offeror and subcontracting entity.

The letter of commitment must be submitted even if the firm is in some way related to a joint venture partner (for example, the subcontractor is a subsidiary of a joint venture partner, or a subsidiary of a firm to which the joint venture partner is also a subsidiary). If a letter of commitment is not submitted, the experience will not be considered.

If a binding Letter of Commitment is not fully executed by both parties and provided with the Past Performance Proposal, subcontractor references will not be evaluated or considered.

10.1.1.2 Similarity Definition

For evaluation purposes, “similar” is defined as work performed in a hydropower plant, dam outlet structure, or industrial facility for the following areas of work. A submitted project does not need to address all areas of work to be considered relevant, but when combined, the submitted projects should address ALL of the items described in bullets “a” through “h”:

“Valves” as defined in this solicitation are 60 inches in diameter or larger.

- a. In situ refurbishment of valves, turbines, or gates/HSS.
- b. In situ weld repairs on valves, turbines, or gates/HSS.
- c. Replacement of valve/gate operators (HPU, hydraulic cylinder operator, etc.)
- d. Refurbishment, adjustment, or replacement of gate or valve seals.
- e. Refurbishment or replacement of bronze bearings.
- f. In situ blasting and recoating of valves or gates/HSS.
- g. Successfully put back into service.
- h. Mechanical installation activities, defined as:
 - Installation of piping to include experience welding in industrial facility, the development, and management of welding procedures, and assembly and installation of tube fittings and adaptors.
 - Performance of coating pipe assemblies.
 - Performance of adequately supporting newly installed pipe assemblies.
 - Performance of removing and installing pipe assemblies in confined spaces near existing equipment.
 - Experience rigging and transporting large equipment with cranes.
- i. Electrical installation activities, defined as:
 - Experience performing electrical scope of work to include providing power to equipment such as pumps via new electrical connections, and relay controls to interface with pressure sensors, level sensors, position sensors, pumps, and control panel fabrication.
- j. The total cost of one (1) of the projects must be valued at more than \$1,000,000.

10.1.2 Performance Appraisals

The past performance information required in this solicitation shall be provided by the Offeror. Past performance information may also be obtained from questionnaires. At the Government’s discretion, past performance information shall be obtained from any other sources available to the Government, to include, but not limited to, the Contractors Performance Assessment Reporting System (CPARS), Federal Awardee Performance and Integrity Information System (FAPIS), Electronic Subcontract Reporting System (eSRS), or other databases; interviews with Program Managers, Contracting Officers, and Fee Determining Officials; and the Defense Contract Management Agency.

10.1.2.1 Contractor Performance Assessment Reports System (CPARS)

For projects constructed for other Government or commercial entities, submit the performance appraisal sheets used by the respective Government or commercial entity. For each project that may be private industry work or other Government entity not covered in the CPARS database, submit Form PPQ-0 (Attachment 1) completed by an owner or owner’s representative not affiliated with the Offeror’s firm. Offerors are advised to ensure correct phone numbers and email addresses are provided for the Client point of contact. Do not submit a PPQ when a completed CPARS evaluation is available. Offeror should explain any past performance resulting in significant cost and/or time growth.

The Government reserves the right to obtain copies of all CPARS records contained in the CPARS database. The Government reserves the right to contact the evaluator on previous Government or Private Sector work to verify the

Offeror's past performance. Firms are requested to retrieve their past performance information directly from CPARS at <https://www.cpars.gov>. CPARS is an electronic repository of performance information collected by all the major Federal performance reporting systems. Logging onto CPARS will require the following:

All firms must have purchased and installed a Public Key Infrastructure (PKI) certificate. Firms without this certificate cannot access company information. Additional information about the PKI certificate is posted in red at the top, center portion, of the <https://www.cpars.gov> web page. The company DUNS number and Marketing Partner Identification Number (MPIN) are needed to log onto CPARS. The MPIN number was selected by the company representative that registered the firm in the System for Award Management (SAM) at www.sam.gov. If the company MPIN number is not known, contact the SAM help desk via the email link on the <http://www.sam.gov> help page. Please be aware, the help desk will only release the MPIN number to the company representative that originally registered the firm.

The two (2) additional ways to obtain a copy of CPARS evaluations are as follows: (1) Contact the Government point of contact for the project in question to request a copy of the evaluation, or (2) Apply for "Contractor Corporate Senior Management Representative" access on the CPARS web site: <http://www.cpars.gov>. This access is issued to only one individual within the firm, typically a member of senior management. In addition to the firm's completed CPARS performance evaluations, the status of evaluations which have not yet been completed is also available. Logon information and access instructions will be emailed upon receipt of the application request.

Offerors are reminded that both independent data and data provided by Offerors in their proposals may be used by the Government to evaluate Offeror past performance. Since the Government may not necessarily interview all the sources provided by the Offerors, it is incumbent upon the Offerors to explain the relevance of the data provided. The Government does not assume the duty to search for data to rectify problems identified in the proposal. The burden of providing thorough and complete past performance information remains with the Offerors. Proposals that do not contain the information requested risk rejection or less favorable performance rating by the Government.

10.1.2.2 Past Performance Questionnaire

For any contract identified for which no CPARS is available, a Past Performance Questionnaire, Form PPQ-0 (Attachment 1), shall be completed and submitted with the proposal.

Offerors shall include in their proposal the written consent of the proposed subcontractors to allow the Government to discuss the subcontractors' past performance evaluation with the Offerors during any discussions. The Government will verify/validate information on both prime and subcontractors that an Offeror provides in the proposal. It is the Offeror's responsibility to contact each reference to 1) obtain authorization to release the information identified in the past performance submission and 2) provide authorization to the references to release performance information to the Government.

10.2 Evaluation Method

In accordance with Paragraph 8.3 and the following criteria, the Government will evaluate the submitted Past Performance information in the areas of recency, relevancy, and quality. Proposals not meeting the minimum three (3) project submissions or failing to include the required project narratives for proposed subcontractors will be rated less favorably. No more than five (5) projects should be submitted. If more than five (5) projects are submitted, only the first five (5) projects listed in the proposal will be evaluated.

If an Offeror proposes to use a Joint Venture or a subcontractor to demonstrate design, manufacturing, or installation/construction experience, the proposal may receive more weight under this sub-factor if it contains evidence of the Joint Venture entity working successfully together previously on relevant projects. Subcontractor past performance will not be evaluated if a binding Letter of Commitment is not included in the proposal.

10.2.1 Recency

For this solicitation, recent projects are those completed or substantially complete within the timeframe required in the Past Performance submission requirements. For the purpose of this solicitation, substantially complete is defined as being 50% construction progress complete or fully complete by the proposal submission due date. If an Offeror

submits a project that is identified as “substantially complete,” the Offeror must reasonably explain why the project is considered at least 50% complete. Where applicable, at the Government’s discretion, projects submitted without the required 50% completion explanation may not be evaluated.

10.2.2 Relevancy

A single submitted project does not need to address all areas of work to be considered, but when combined, the submitted projects should address ALL the required areas of work defined in Paragraph 10.1.1.2, Similar Definition; note the defining elements for achieving a higher rating below. Project submissions that do not meet the requirement to demonstrate the past performance of ALL areas of work may be rated less favorably.

The Government will evaluate past performance in design, manufacturing, and installation/construction of equipment and demonstrated compliance with specification requirements for equipment of similar size, scope, and complexity as this RFP. Higher evaluation ratings may be given for those project examples that demonstrate more extensive combined experience in the areas of work defined in Paragraph 10.1.1.2, Similar Definition. In assessing the relevancy of the Offeror’s past performance, the Government may rate the following more favorably:

- a. In situ refurbishment of **butterfly** valves.
- b. In situ refurbishment of **butterfly** valves at least 78-inch in diameter.
- c. In situ weld repairs on **butterfly** valves.
- d. HPU and hydraulic cylinder design, manufacturing, and installation for valves.
- e. In situ refurbishment, adjustment, or replacement of metal seals on **butterfly** valves at least 78-inch in diameter.
- f. Refurbishment or replacement of bronze bearings at least 20-inch in diameter and larger.
- g. In situ blasting and recoating of metal surfaces in confined spaces.
- h. Management of a hydropower or dam outlet works project requiring a unit outage demonstrating the Offeror’s capability to construct a project of this nature and execute the project successfully while containing costs and maintaining schedule.
- i. Demonstrated “Mechanical Installation Activities” (as defined in paragraph 10.1.1.2, Similar Definition) on a hydropower or dam outlet works project.
- j. Demonstrated “Electrical Installation Activities” (as defined in paragraph 10.1.1.2, Similar Definition) on a hydropower or dam outlet works project.
- k. Demonstrated experience with a 5-E-Z vinyl paint system.
- l. Projects constructed for the Federal Government.
- m. Projects performed as the prime contractor.

Omission of requested information will result in lower ratings than submissions containing all the information identified in the Paragraph 10.1. More relevant past performance will typically be a stronger predictor of future success and have more influence on the past performance confidence assessment than past performance of lesser relevance.

10.2.3 Quality

The Quality evaluation will examine how well Offerors have performed on previous projects. The Contractors Performance Assessment Reporting System (CPARS) will be queried to determine the past performance of the Offeror’s for similar projects. The Government will evaluate the relative merits of each Offeror’s past performance and may, at its discretion, contact references cited to verify the information contained therein. All aspects of an Offeror’s performance history will be considered, with greater weight given to projects similar in nature, magnitude, and complexity to this project as well as, projects which provided particularly difficult or unique challenges, where the contractor employed innovative methods to successfully resolve problems.

Projects indicating less than satisfactory performance in the areas of workmanship, timeliness, safety, customer service, adherence to budget, subcontractor management (timely payment to subs or suppliers), relations between owner and contractor, as well as the level of support provided for As-built documentation, O&M manuals, training, correcting construction errors, and warranty work may be rated less favorably. Projects showing significant cost and time growth will be rated less favorably than those that maintain the contract completion date and the original award amount.

The Government places a higher value on projects which document successful outcomes and are supported by outside source confirmation (CPARS, other agency performance databases, offeror furnished references, or personal knowledge). CPARS ratings will be given more weight than equivalent performance ratings for other types of evaluations. For Past Performance, an Unknown Confidence (Neutral) rating will be awarded when no past performance records are available. Per Federal Acquisition Regulation (FAR) 15.305(a)(2)(iv), "In the case of an Offeror without a record of relevant past performance or for whom information on past performance is not available, the Offeror may not be evaluated either favorably or unfavorably on past performance." Omission of rating sheets will result in lower ratings for this factor. **If an evaluation is unattainable, a written explanation regarding the omission shall be provided.**

10.2.4 Performance Confidence Assessment

Recency, relevancy, and quality past performance aspects will be used to develop an overall confidence assessment rating for the Past Performance factor. More relevant and recent past performance will typically be considered a stronger predictor of future success and may have more influence on the past performance confidence assessment rating. Evaluation of quality on more recent and relevant projects may have more influence on the past performance confidence assessment rating.

11 FACTOR 2 - TECHNICAL APPROACH – WORK PLAN

11.1 Submission Requirements

The Offeror shall provide a comprehensive Work Plan developed specifically for this project, **for evaluation purposes only**, to verify Offeror's approach to performing the required work as outlined in the specifications, submittal schedules, equipment procurement and delivery, offsite fabrication and repair, key milestones and contract required schedule constraints. **For proposal evaluation purposes only**, the Offeror should use an **arbitrary, non-binding** Notice to Proceed (NTP) date of May 1, 2023. The Work Plan shall be limited to no more than 25 pages; therefore, any content beyond page 25 will not be evaluated. The proposed Gantt chart schedule does not count towards the 25 page limit.

The Work Plan shall include a project schedule in Gantt Chart format and a Work Plan Narrative explanation of the management approach for the design, manufacturing, and installation/construction teams (i.e. installation, testing and commissioning team), clearly showing how the prime contractor will manage the design, manufacture, and construction of the project to ensure a well-coordinated quality product, completed on time and with a minimum amount of contract modifications. The management approach should include an organizational chart and address the interaction between the designers, manufacturers, suppliers, construction prime and subcontractors during the design, manufacturing, and installation/construction phases of the project, including controls and revisions to the accepted design, requests for information, and shop drawings/submittal reviews.

At a minimum, the Work Plan shall address the activities outlined below in the areas of Gantt Chart and Work Plan Narrative.

11.1.1 Gantt Chart:

Submit a project schedule in Gantt chart format using the critical path method (MS Project or Primavera software). Provide enough detail and tasks to adequately cover the scope of the project and the activities required to successfully complete the project as required by the solicitation.

Include the following:

1. All applicable phases of work, to include design, fabrication, shop testing, delivery, disassembly, installation, reassembly, and on-site testing/commissioning.
 - a. Pre-construction submittals
 - b. System/Routing design submittals (design data, design calculations, product data, and drawings)
 - c. Manufacturing, procurement, shop assembly and testing (factory tests)
 - d. Delivery, disassembly, installation, reassembly, to include:
 - i. Refurbishment of butterfly valves (i.e., on-site construction work)
 - ii. Removal of existing HPUs, BFV Operators, and components
 - iii. Installation of new HPUs, BFV Operators, and components

- iv. Electrical work
 - e. Field tests and final acceptance tests.
 - f. Closeout submittals (O&M Manuals and As-Built) and Training
- 2. All major milestones, to include major component delivery completion, disassembly start date, acquisition of long lead items, installation complete, reassembly complete, and on-site testing completion (The maximum allowable schedule must meet the stated schedule requirements specified in the Contract Clause 52.211-10, Commencement, Prosecution, and Completion of Work).
- 3. Address the below Schedule Constraints as specified in the solicitation documents :
 - a. Pre-Construction Submittals submitted/approved within the specified calendar days after Notice To Proceed being issued,
 - b. Design drawings and install procedures completed and submitted within the specified calendar days prior to the start of any required outage,
 - c. All work requiring an outage must be completed within the projected outage window of 16Sep 2024 and 10 Feb 2025.
 - d. Government dewatering of the penstocks requires five (5) calendar days, typically the unit will be unwatered on a Monday and be allowed to dry for the remainder of the work week.
 - e. Work hours shall conform to solicitation constraints outlined in Section 01 12 00, FEDERAL HOLIDAYS AND WORKING HOURS.
 - f. On-site work not requiring an outage can occur at any point after pre-construction submittal approval.
 - g. Include commissioning requirements outlined in Sections 22 00 00.00 26, paragraph "Field Operational Tests" and Section 35 05 40.14 26, paragraph "Field Tests and Inspections."

11.1.2 Work Plan Narrative:

Provide a detailed narrative for how the offer plans to execute the work, with at a minimum, the following addressed:

1. How the offeror plans to successfully complete the following project phases: Inspection, disassembly, procurement, fabrication, factory testing, installation, and on-site testing of all major features of work.
2. Likely challenges and constraints to be encountered (e.g., site restrictions, access limitations and availability, restricted resources, and phasing identified in the solicitation documents) and the offeror's plan to deal with those challenges and constraints.
3. Description of any major equipment required and how the offeror will procure and use that equipment onsite.
4. Provide an Organizational Chart that describes the prime and all subcontractors that will be required to successfully complete the project as required by the solicitation (e.g., project management, design, manufacturing, installation/construction, including suppliers of major systems and equipment, and QC at all levels: design/manufacturing/on-site construction/etc.).

11.2 Evaluation Method

In determining strengths and weaknesses, the Government will consider the following when evaluating the Offeror's Work Plan:

- a. How realistic the Offeror's schedule durations are considering the scope of work and the Offeror's stated plan for each work phase.
- b. The extent to which the Offeror understands the scope of work and how to accomplish each project phase.
- c. The extent to which the Offeror understands the challenges to be encountered during construction, such as schedule constraints, site constraints, and logistics related to long lead items/equipment; and
- d. The extent to which the Offeror has a logical and well-thought out plan for dealing with challenges to be encountered during construction, to include maximizing flexibility to deal with unexpected problems.

A detailed and descriptive, project-specific Work Plan that addresses all requested items in a thorough and comprehensive manner and describes the Offeror's approach with a supporting Gantt chart reinforcing a realistic

schedule will receive greater weight than a vague and general plan. Feasible schedules that shorten outage durations may be rated more favorably.

12 FACTOR 3 - PERSONNEL QUALIFICATIONS AND EXPERIENCE

12.1 Submission Requirements

In addition to the company's experience submitted for Factor 1, the Offeror should submit the names and resumes for key design and construction personnel that will be assigned to this project. A summary resume must be provided that clearly indicates the education, separate duties, responsibilities, and recent experience for each individual. **Resumes should be listed in reverse chronological order, with the latest experience listed first, and time gaps on each resume fully explained.** Resumes should be submitted for the following key personnel:

Project Manager
Design Engineer(s)
Project Superintendent
Construction Quality Control Manager

Limit resume information furnished to two (2) pages. All of the submitted prior projects must be designed and constructed prior to the time of proposal submission. Project narratives should contain the following, at a minimum:

- (1) Worker's name, assignment for this project, and company employing the person.
- (2) Project name, period of performance on worksite.
- (3) Project contract value.
- (4) Description of primary project feature(s).
- (5) Name and telephone number of point of contact for project owner.
- (6) Name and telephone number of job supervisor.
- (7) Position occupied on each assignment and time assigned to each position, including current position.
- (8) Description of duties and responsibilities for each position occupied.
- (9) Professional registrations, licenses, certifications, accomplishments, or other pertinent information that demonstrates their suitability for the work assigned to them.

12.1.1 Project Manager

The Contractor shall employ a Project Manager for this contract who shall be the Contractor's Agent and have full authority to negotiate and sign all contract modifications. Successful demonstration of experience will include:

- a) Resume of work history demonstrating a minimum of 5 years of experience within the last 10 years in the management of projects involving the disassembly, field rehabilitation and reassembly of power generation large valves, turbines, pumps, or gates/HSS, and appurtenances and associated equipment.
- b) A 4-year bachelor's degree from an accredited university in either engineering or construction management. A minimum of fifteen (15) years of experience in the management of projects involving the disassembly, field rehabilitation of the equipment, and reassembly of power generation large valves, turbines, pumps, or gates/HSS may be submitted in lieu of the educational requirement.

12.1.2 Design Engineer(s)

The Design Engineer(s) resume(s) shall identify the systems they will be responsible for designing under this solicitation, and their Registered Professional Engineer credentials. Successful demonstration of experience will include:

- a) A minimum five (5) years of experience over the past ten (10) years performing as an engineer on projects of similar size, scope, and complexity as this project.

- b) Engineer shall demonstrate experience in the design, tolerancing, and sequencing for rehabilitation of valves, turbines, or gates/HSS with machine tolerances. Submit resume for design engineer(s) along with at least three (3) project profiles showing relevant design experience.

If more than one (1) Design Engineer is to be used, roles and responsibilities must be clearly delineated, and individual resumes provided. The proposal should include all design engineers that will be performing design tasks and stamping design calculations and drawings as specified in the solicitation documents (specification sections).

12.1.3 Project Superintendent

Successful demonstration of Project Superintendent experience will include:

- a) A minimum of five (5) years in the last ten (10) years construction related experience of working as a Project Superintendent supervising projects of similar size, scope, and complexity as this project
- b) Submission of a minimum of three (3) project descriptions that clearly illustrate the proposed Project Superintendent's experience. Each project does not need to address all areas of work; however, when combined, the submitted projects should address 80% of the scope of work defined in Paragraph 10.1.1.2.

12.1.4 Construction Quality Control Manager

Successful demonstration of the Construction Quality Control Manager (CQCM) experience will include:

- a) A minimum of five (5) years of experience within the last ten (10) years performing as a CQC Manager on construction projects similar in function, scope, complexity, size, and contract value as this solicitation.
- b) Proof of completion of the USACE Learning Center course entitled "Construction Quality Management for Contractors" within the last five (5) years.

If, after award, the key personnel identified in the proposal are not able to be utilized on this project, replacement personnel with similar skills and experience shall be presented for acceptance and written approval by the Contracting Officer. Before making any substitutions for these designated personnel replacement individuals for this project shall be required to have qualifications and experience meeting or exceeding those identified in the proposal.

12.2 Evaluation Method

Qualifications of key design and construction personnel assigned to this project will be considered. More favorable evaluation ratings may be given for personnel with past experience on projects similar to this project. In addition, higher ratings may also be given for a higher number of relevant years' experience in the position being proposed. Offerors providing resumes for key personnel that worked on the projects submitted under Factor 1, and meet the relevancy definition, will be viewed more favorably by the Government.

Personnel that do not meet the requirements identified above may be rated less favorably. Prior experience on Federal construction projects is preferred and will be evaluated more favorably. Minimum standards to receive an "acceptable" rating:

- a. Resumes of key personnel illustrating experience outlined above with a minimum of 5 years' experience in the last 10 years; *and*
- b. The total cost of at least one of the projects must be valued at more than \$1,000,000; *and*
- c. The Project Superintendent successfully demonstrated experience with projects of similar size, scope, and complexity as this project

A more favorable rating may be assigned based on the following:

- a. Design Engineers with professional license and demonstrating experience with designing systems used in the refurbishment of existing large valves (at least 78-inch diameter and larger).
- b. Project Superintendent with experience in supervising in situ weld repair of hydropower equipment (Repairs to Kaplan runner in-place, stainless steel overlay/cladding of carbon steel, and valves). Experience with repairs similar in scope to the work required by these specifications (i.e., large valves 78-inch diameter and larger)
- c. The CQCM, has experience specific to the refurbishment of existing large valves(at least 78-inch diameter). or other hydropower equipment. For example, repairs with Kaplan runner in-place, stainless steel

overlay/cladding of carbon steel, and similar work.

13 FACTOR 4 – SMALL BUSINESS PARTICIPATION

All Offerors (both large and small businesses) will be evaluated on the level of proposed participation of U.S. small businesses in the performance of acquisition (as small business prime offerors or small business subcontractors) relative to the objectives and goals established herein. All Offerors (both large and small businesses) must complete and submit a Small Business Participation Proposal Worksheet (Attachment 2). Reference Paragraph 17, Utilization of Small Business Concerns for additional small business information.

The Government will evaluate:

- a. The extent to which such firms, as defined in FAR Part 19, are specifically identified in proposals;
- b. The extent of commitment to use such firms (and enforceable commitments will be considered more favorably than non-enforceable ones);
- c. Identification of the complexity and variety of the work small firms are to perform;
- d. The extent of participation of small business prime offerors and small business subcontractors in terms of the percentage of the value of the total acquisition.

Offerors who propose subcontracting that exceed the required 20% goal of total contract dollars (not subcontracting dollars) will receive a more favorable evaluation than Offerors that merely meet the goal. Offerors will be evaluated on their proposed utilization and participation of small business concerns as team members, subcontractors, and/or suppliers in the resulting contract. The Offeror's will be evaluated on its commitments that small business concerns will have maximum subcontracting opportunities. Enforceable commitments to use small business concerns will receive more favorable evaluations than non-enforceable commitments. Offerors will be evaluated favorably if they provide assurances that small business clauses and terms are included in subcontracts.

14 Volume 2 – Price

14.1 Submission Requirements

The Offeror should submit the following information in **Volume 2 (Price)**.

14.1.1 Cover Letter

The Offeror shall submit a cover letter stating that their proposal/offer complies completely with all the terms, conditions and specifications contained in the solicitation. A proposal/offer that does not comply with all terms, conditions and specifications in the solicitation will be automatically rejected and not considered for award.

14.1.2 Section 00 10 00, Solicitation/Contract Form and Pricing Schedule

The Offeror shall include the completed SF Form 1442 (Pages 00 10 00-1 and 00 10 00-2) of the RFP, along with the completed CLIN Pricing Schedule.

14.1.3 Section 00 45 00, Representations, Certifications and Other Statements of Offerors

14.1.4 System for Awards Management

The information requested in this Section needs to be fully completed along with completion of System for Award Management per FAR 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS and DFARS 252.204-7007 ALTERNATE A, ANNUAL REPRESENTATIONS AND CERTIFICATIONS.

14.1.5 Pre-Award Survey Information

In accordance with FAR Clause 52.228-15 PERFORMANCE AND PAYMENT BONDS, the following information should be submitted with each proposal. Submission of this information will expedite the award process:

- (1) Financial:

Name, address, fax number and e-mail address of Financial Institution.

Name and phone number of financial individual (primary and alternate) to be contacted.

(2) Bonding Information:

Provide the name, address, regular phone number, fax number and e-mail address of the Offeror's Surety Company.

(3) Small Business Information.

14.1.6 Joint Venture Agreement

If an Offeror is a Joint-Venture entity, the Offeror shall provide a copy of the joint venture agreement.

14.2 Evaluation

14.2.1 Evaluated Price

The total evaluated price will be the summation of CLIN prices (to include option CLINs) proposed by the Offeror in the CLIN Pricing Schedule (refer to Section 00 10 00). The total evaluated price will be the price used for purposes of conducted the best-value tradeoff analysis. The total evaluated price will not be scored or rated.

14.2.2 Price Reasonableness

Price analysis of the individual proposed CLIN prices will be performed using one or more of the techniques described in FAR 15.404-1(b). Cost analysis techniques described in FAR 15.404-1(c) may also be used to evaluate data other than certified cost or pricing data to determine cost reasonableness when a fair and reasonable price cannot be determined through price analysis alone. Through these techniques, the Government will determine whether the CLIN prices proposed by the Offeror are reasonable. Because the price evaluation will represent a portion of the total evaluation, it is possible that an Offeror will not be selected for award for proposing unreasonable prices.

14.2.3 Unbalanced Pricing

Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The CLIN prices will be analyzed to determine if the prices are unbalanced in accordance with FAR 15.404-1(g).

15 UTILIZATION OF SMALL BUSINESS CONCERNS

15.1 Eligibility Requirements for Participating as a Member of the Small Business Community (SBC)

- (1) To be eligible for membership, a concern must represent itself as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or woman-owned small business concerns.
- (2) To represent itself as a member of the SBC, the concern must meet the appropriate definition as indicated at the solicitation clause 52.219-8 Utilization of Small Business Concerns and documented at Federal Acquisition Regulation (FAR) Parts 2.1 and 19.001.

15.2 Definitions

- (1) 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 and size standards in 213 CFR Part 121 – Small Business Size Regulation. The term, hereafter referred to as the “Small Business Community (SBC)”, encompasses the following members:

- a. Small Business Concern (SB)
- b. Small Disadvantaged Business Concerns (SDB)
- c. Historically Underutilized Business Zone SB (HubZone)

- d. Service-Disabled Veteran Owned SB (SDVOSB)
- e. Veteran Owned SB (VOSB)
- f. Woman owned SB (WOSB)

(2) Other than Small Business Concerns are all other entities including Large Business Concerns, State and local governments, Non-profit organizations, Public Utilities, Educational institutions and foreign-owned firms that are awarded Federal contracts for performance within the United States.

(3) Prime Contractor means any agreement (other than one involving an employer- employee relationship) entered into by the Federal Government with a contractor calling for supplies or services required for performance of the contract.

(4) Not Used

(5) Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a prime contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract. The Government does not have privity of contract with subcontractors.

(6) Not Used

(7) Contractor Team Arrangements as used in this solicitation, resultant proposals and contracts means an arrangement in which (1) two or more companies form a partnership or joint venture to act as a potential prime contractor; or (2) a potential prime contractor agrees with one or more other companies to have them as its subcontractor for the requirement indicated in this solicitation.

(8) Joint-Venture, for the purpose of this solicitation, is an association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally.

15.3 Contractor Team Arrangements

The Contracting Officer will recognize the integrity and validity of contractor team arrangements; provided, the arrangements are identified and company relationship are fully disclosed and validation of formal agreements and relationships (i.e., Mentor-Protégé agreements, joint-ventures, partnerships, etc.) are provided in the offer and submitted with the proposal responding to the solicitation. Nothing in the solicitation authorizes contractor team arrangements in violation of antitrust statutes or limits the Government's rights to:

- (1) Require consent to subcontracts (FAR Subpart 44.2)
- (2) Determine, on the basis of the stated contractor team arrangement, the responsibilities of the prime contractor
- (3) Provide to the prime contractor data rights owned or controlled by the Government.
- (4) Pursue its policies on competitive contracting, subcontracting, and component breakout and initial production or at any other time; and
- (5) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

15.4 Joint Ventures and Affiliation

- (1) The joint venture is viewed as a business entity in determining power to control its management. For the purpose of this solicitation, a joint venture entity cannot submit more than three offers over a two-year period, starting from the date of the submission of the first offer.
- (2) The Contracting Officer may determine if the relationship between a prime contractor and its subcontractor is a joint venture, and that affiliation between the two (2) exists.
- (3) A joint venture of two (2) or more business concerns may submit an offer as a small business in response to this solicitation without regard to affiliation so long as each concern is small under the size standard corresponding to the NAICS code assigned to the solicitation.
- (4) Parties to a joint venture are affiliates if any one of them seeks SBA financial assistance for use in connection with the joint venture.
- (5) A joint venture of two (2) or more business concerns may submit an offer as a small business for a Federal procurement without regard to affiliation as long as each concern is small under the size standard corresponding to the NAICS code assigned to the solicitation.
- (6) The completed approved joint venture agreement must be submitted with the initial offer to the solicitation.

15.5 Service Disabled Veteran Owned SB Joint-Venture Requirements

At time of initial offer, the Service-Disabled Veteran Owned (SDVOSB) must be small within the size standard corresponding to the NAICS code assigned to the solicitation. A joint venture of at least one SDVOSB and one more business concerns may submit an offer as a small business for a competitive SDVOSB procurement so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract provided:

- (1) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract.
- (2) For a procurement having an employee-based size standard, the procurement exceeds \$10 million.
- (3) For sole source and competitive SDVOSB procurements that do not exceed the dollar levels identified in 1 and 2 above, an SDVOSB entering into a joint venture agreement with another concerns is considered to be affiliated for size purposes with the other concern with respect to performance of the SDVOSB contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the NAICS code assigned to the SDVOSB solicitation.
- (4) Every joint venture agreement to perform an SDVOSB contract must contain provisions (i) setting forth the purpose of the joint venture (ii) designation the SDVOSB as the managing venture and its employee as the responsible project manager for performance (iii) 51% of the net profit earned by the joint venture will be distributed to the SDVOSB.
- (5) The Joint-Venture Entity must be registered in System for Award Management at www.sam.gov.
- (6) The resultant contract will be executed in the name of the joint venture entity.
- (7) The joint-venture agreement must be provided with submission of the initial offer to the solicitation.

15.6 Joint Ventures/SAM Registration

No contract may be awarded to a joint venture that is not registered in the System for Award Management (SAM). Joint ventures may register in the following way:

- a. The firm that will be the recipient of payments should be registered in SAM and have a DUNS number. This firm is considered in the SAM to be the “mother firm.” If no money is to go to any other firm in the joint venture, the mother firm may make the other firm in the joint venture a “child.” This child will be assigned the mother firm’s SAM number with an additional four (4) numbers attached. Since the child firm is not receiving any payments, they do not need to get a DUNS number. HOWEVER, in order to cover all possibilities, it might be advisable to have each firm registered in SAM.
- b. Call SAM at 1-866-606-8220, choose option “0” to get the mother -child relationship set up. DUN & Bradstreet phone number is 1-800-333-0505. See Section 00 21 00 Instructions, Conditions and Notices to Offerors for Internet and Fax Registration options.
- c. If the joint venture has a newly created name, then it must have its own DUNS number and register as such in SAM.
- d. In the cover letter of your proposal, provide the complete names, addresses, and phone and fax numbers of the two firms in the joint venture.
- e. Signature requirements: SF 1442, SOLICITATION, OFFER, AND AWARD (pages 00 11 00-1 and 00 11 00-2), Block 20 requires that the name and title of the person authorized to sign the offer for the joint venture be provided.
- f. Corporate certificate: Ensure that the joint-venture portion is completed by both firms.
- g. In the case of a joint venture, the following is required: A contract with joint ventures may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner prescribed below for each type of participant. When a corporation is participating, the Contracting Officer shall verify that the corporation is authorized to participate in the joint venture.
 - (1) Individuals. A contract with an individual shall be signed by that individual. A contract with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual’s types, stamped, or printed name and the words “an individual doing business as ” [insert name of firm].
 - (2) Partnerships. A contract with a partnership shall be signed in the partnership name. Before signing for the Government, the Contracting Officer shall obtain a list of all partners and ensure that the individual(s) signing for the partnership have authority to bind the partnership.
 - (3) Corporations. A contract with a corporation shall be signed in the corporate name, followed by the word “by” and the signature and title of the person authorized to sign. The Contracting Officer shall ensure that the person signing for the corporation has authority to bind the corporation.
 - (4) In addition to the requirements stated above, and to assure a single point of contact for resolution of contractual matters and payments, the Contracting Officer shall obtain a certificate signed by each participant in the joint venture as follows: In the proposal include the following statement:

“The parties hereto expressly understand and agree as follows:

- a. (name, title, and company) is the principal representative of the joint venture. As such, all communications regarding the administration of the contract and the performance of the work thereunder may be directed to him or her. In the absence of (same name, title, and company), (enter name, title, and company of alternate) is the alternate principal representative of the joint venture.

- b. Direction, approvals, required notices, and all other communications from the Government to the joint venture, including transmittal of payments by the Government, shall be directed to (enter name, title, and company of principal), principal representative of the joint venture.”

16 COMPETITIVE RANGE

Upon completion of initial proposal evaluation, if discussions are determined to be needed, the Government may establish a competitive range for the purpose of conducting written discussion. The competitive range shall be determined on the basis of the factors stated in the solicitation and shall include all of the most highly rated proposals, unless the range is reduced for reasons of efficiency. **The Government intends to award a contract on the basis of initial offers received, without discussions.** Therefore, each initial offer should contain the Offeror's best terms from a cost or price and technical standpoint. Notwithstanding, the Government may conduct written discussions with all responsible Offerors who submit proposals and are considered within the competitive range. Offerors submitting proposals determined outside of the competitive range (lacking a reasonable chance of being selected for contract award) will be notified in writing prior to the initiation of discussions.

17 CLARIFICATIONS AND DISCUSSIONS

For definitions of the Evaluation terms referenced below, see paragraph 8.2 above. The information provided in this paragraph includes procedural information associated with clarifications and discussions.

Clarifications. During the evaluation, if a proposal requires clarification for the Board to complete its evaluation, a written list of questions and/or comments will be provided to the Offeror by the Contracting Representative or Contracting Officer. Any request for clarifications will be issued by letter. Contractors will not be permitted to change their proposals in response to a request for clarifications. All contact with Offerors will be through the Contracting Division. There will be no direct contact by the SSEB with any Offeror(s).

Communications. Communications, as defined in paragraph 8.2.7 above, between the Government and Offerors, after receipt of proposals, leading to establishment of the competitive range, will not occur without the participation of the Contracting Officer.

Discussions. If discussions, as defined in paragraph 8.2.8 above, are necessary, written and/or verbal, they will be conducted with all firms in the competitive range once a written Determination to hold such discussions has been approved by the Contracting Officer. FAR 15.306(d)(3) and the Comptroller General Decisions indicate that all content of discussions are a matter within the Contracting Officer's judgment. Discussions involve an exchange of information essential to determining the acceptability of a proposal. During the exchange of information, Offerors must be informed of all deficiencies and significant weaknesses in their proposals and offered an opportunity to revise their proposals. No technical leveling, transfusion or auction techniques shall result from discussions. Discussions will be concluded as of the date specified for receipt of a Final Revised Proposal from those Offerors determined to be in the competitive range in accordance with FAR 15.306(c)(2).

18 FINAL PROPOSAL REVISIONS

If discussions are held, upon their completion, the Government shall issue to all Offerors within the competitive range a request for final proposal revisions specifying the exact date and time for submission of the revision. Any verbal revisions to proposals made during the course of discussions must be included in the Offeror's written Final Revised Proposal. Any verbal revisions not included in the final revision will not be considered in re-evaluating the proposals. Any verbal request for a Final Revised Proposal shall be confirmed in writing. The confirmation shall include:

- a. Notice that discussions are concluded.
- b. Notice that this is the opportunity to submit a Final Revised Proposal.
- c. Establishment of a common cutoff date and time that allows the Offerors reasonable opportunity for submission of written Proposal revisions.
- d. Notice that Proposal Revisions, and modifications thereto, must be received by the date, time, and in the place specified in the notice, or they are subject to the Late Offers provision in the solicitation in Section 00 21

00.

Following the evaluation of final proposal revisions, the Government will select the Offeror whose initial and final proposal revision presents the Best Value and is most advantageous, considering only the factors included in the solicitation, to the Government.

19 DEBRIEFING

Each Offeror, successful or unsuccessful, will have the opportunity, in accordance with Federal Acquisition Regulation (FAR) 15.505 and 15.506, to receive one debriefing. Offerors are required to submit a written request for debriefing and discussion of the evaluation of its proposal within three (3) calendar days after receipt of exclusion from competition or notice of award. Each Offeror shall be provided only one debriefing, either post award or pre-award, at their choosing. After receiving the debriefing, the contractor has three (3) calendar days to submit any final questions and the Contracting Officer will respond to those final questions as part of the debriefing process. A written debriefing of all Offerors, successful or unsuccessful, will be conducted by the Contracting Officer in accordance with the FAR. The Contracting Specialist will coordinate the debriefings. Debriefing participation will include the Contracting Officer, chairperson of the SSEB, and Contracting Specialist with additional support from other members of the SSEB as required. The Contracting Officer will conduct the debriefings. The Contracting Officer reserves the right to conduct written debriefings only.

20 ATTACHMENT 1

BLANK PERFORMANCE EVALUATION SHEETS

ON USACE SOLICITATIONS. CLIENTS ARE HIGHLY ENCOURAGED TO SUBMIT QUESTIONNAIRES DIRECTLY TO THE OFFEROR. HOWEVER, QUESTIONNAIRES MAY BE SUBMITTED DIRECTLY TO USACE. PLEASE CONTACT THE OFFEROR FOR USACE POC INFORMATION. THE GOVERNMENT RESERVES THE RIGHT TO VERIFY ANY AND ALL INFORMATION ON THIS FORM.

ADJECTIVE RATINGS AND DEFINITIONS TO BE USED TO BEST REFLECT
YOUR EVALUATION OF THE CONTRACTOR'S PERFORMANCE

RATING	DEFINITION	NOTE
(E) Exceptional	Performance meets contractual requirements and exceeds many to the Government/Owner's benefit. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the contractor was highly effective.	An Exceptional rating is appropriate when the Contractor successfully performed multiple significant events that were of benefit to the Government/Owner. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there should have been NO significant weaknesses identified.
(VG) Very Good	Performance meets contractual requirements and exceeds some to the Government's/Owner's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor were effective.	A Very Good rating is appropriate when the Contractor successfully performed a significant event that was a benefit to the Government/Owner. There should have been no significant weaknesses identified.
(S) Satisfactory	Performance meets minimum contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.	A Satisfactory rating is appropriate when there were only minor problems, or major problems that the contractor recovered from without impact to the contract. There should have been NO significant weaknesses identified. Per DOD policy, a fundamental principle of assigning ratings is that contractors will not be assessed a rating lower than Satisfactory solely for not performing beyond the requirements of the contract.
(M) Marginal	Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only marginally effective or were not fully implemented.	A Marginal is appropriate when a significant event occurred that the contractor had trouble overcoming which impacted the Government/Owner.

(U) Unsatisfactory	Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains serious problem(s) for which the contractor's corrective actions appear or were ineffective.	An Unsatisfactory rating is appropriate when multiple significant events occurred that the contractor had trouble overcoming and which impacted the Government/Owner. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating.
(N) Not Applicable	No information or did not apply to your contract	Rating will be neither positive nor negative.

TO BE COMPLETED BY CLIENT

PLEASE CIRCLE THE ADJECTIVE RATING WHICH BEST REFLECTS YOUR EVALUATION OF THE CONTRACTOR'S PERFORMANCE.

1. QUALITY:							
a) Quality of technical data/report preparation efforts	E	VG	S	M	U	N	
b) Ability to meet quality standards specified for technical performance	E	VG	S	M	U	N	
c) Timeliness/effectiveness of contract problem resolution without extensive customer guidance	E	VG	S	M	U	N	
d) Adequacy/effectiveness of quality control program and adherence to contract quality assurance requirements (without adverse effect on performance)	E	VG	S	M	U	N	
2. SCHEDULE/TIMELINESS OF PERFORMANCE:							
a) Compliance with contract delivery/completion schedules including any significant intermediate milestones. <i>(If liquidated damages were assessed or the schedule was not met, please address below)</i>	E	VG	S	M	U	N	
b) Rate the contractor's use of available resources to accomplish tasks identified in the contract	E	VG	S	M	U	N	
3. CUSTOMER SATISFACTION:							
a) To what extent were the end users satisfied with the project?	E	VG	S	M	U	N	
b) Contractor was reasonable and cooperative in dealing with your staff (including the ability to successfully resolve disagreements/disputes; responsiveness to administrative reports, businesslike and communication)	E	VG	S	M	U	N	
c) To what extent was the contractor cooperative, businesslike, and concerned with the interests of the customer?	E	VG	S	M	U	N	
d) Overall customer satisfaction	E	VG	S	M	U	N	
4. MANAGEMENT/ PERSONNEL/LABOR							
a) Effectiveness of on-site management, including management of subcontractors, suppliers, materials, and/or labor force?	E	VG	S	M	U	N	
b) Ability to hire, apply, and retain a qualified workforce to this effort	E	VG	S	M	U	N	
c) Government Property Control	E	VG	S	M	U	N	
d) Knowledge/expertise demonstrated by contractor personnel	E	VG	S	M	U	N	
e) Utilization of Small Business concerns	E	VG	S	M	U	N	
f) Ability to simultaneously manage multiple projects with multiple disciplines	E	VG	S	M	U	N	
g) Ability to assimilate and incorporate changes in requirements and/or priority, including planning, execution and response to Government changes	E	VG	S	M	U	N	
h) Effectiveness of overall management (including ability to effectively lead, manage and control the program)	E	VG	S	M	U	N	
5. COST/FINANCIAL MANAGEMENT							
a) Ability to meet the terms and conditions within the contractually agreed price(s)?	E	VG	S	M	U	N	
b) Contractor proposed innovative alternative methods/processes that reduced cost, improved maintainability or other factors that benefited the client	E	VG	S	M	U	N	

c) If this is/was a Government cost type contract, please rate the Contractor's timeliness and accuracy in submitting monthly invoices with appropriate back-up documentation, monthly status reports/budget variance reports, compliance with established budgets and avoidance of significant and/or unexplained variances (under runs or overruns)	E	VG	S	M	U	N
d) Is the Contractor's accounting system adequate for management and tracking of costs? <i>If no, please explain in Remarks section.</i>	Yes	No				
e) If this is/was a Government contract, has/was this contract been partially or completely terminated for default or convenience or are there any pending terminations? <i>Indicate if show cause or cure notices were issued, or any default action in comment section below.</i>	Yes	No				
f) Have there been any indications that the contractor has had any financial problems? <i>If yes, please explain below.</i>	Yes	No				
6. SAFETY/SECURITY						
a) To what extent was the contractor able to maintain an environment of safety, adhere to its approved safety plan, and respond to safety issues? (Includes: following the users rules, regulations, and requirements regarding housekeeping, safety, correction of noted deficiencies, etc.)	E	VG	S	M	U	N
b) Contractor complied with all security requirements for the project and personnel security requirements.	E	VG	S	M	U	N
7. GENERAL						
a) Ability to successfully respond to emergency and/or surge situations (including notifying COR, PM or Contracting Officer in a timely manner regarding urgent contractual issues).	E	VG	S	M	U	N
b) Compliance with contractual terms/provisions <i>(explain if specific issues)</i>	E	VG	S	M	U	N
c) Would you hire or work with this firm again? <i>(If no, please explain below)</i>	Yes	No				
d) In summary, provide an overall rating for the work performed by this contractor.	E	VG	S	M	U	N

Please provide responses to the questions above (*if applicable*) and/or additional remarks. Furthermore, please provide a brief narrative addressing specific strengths, weaknesses, deficiencies, or other comments which may assist our office in evaluating performance risk (*please attach additional pages if necessary*):

21 ATTACHMENT 2**Small Business Participation Proposal Worksheet**

All Offerors (both large and small businesses) are required to complete a Small Business Participation Proposal. Offerors should propose the level of participation of small businesses (as a small business prime and/or small business subcontractors) in the performance of the acquisition relative to the objectives/goals set forth in the evaluation of this area.

1. Check the applicable size and categories for the PRIME offeror only -- Check all applicable boxes:
 - ☐ Large Prime
 - ☐ Small Business Prime; also categorized as a
 - ☐ Small Disadvantaged Business (SDB)
 - ☐ Woman-Owned Small Business (WOSB)
 - ☐ Historically Underutilized Zone (HUB Zone) Small Business
 - ☐ Veteran Owned Small Business (VOSB)
 - ☐ Service Disabled Veteran Owned Small Business (SDVOSB)
1. Submit the total percentage of work to be performed by both large and small businesses (include the percentage of work to be performed both by Prime and Subcontractors):

Example: If Prime proposes a price of \$1,000,000 (including all options), and small business(es) will provide \$250,000 in services/supplies as a prime or subcontractor, the % planned for small businesses is 25%; and 75% for large business equaling 100%.

Total Percentage planned for Large Business (es) _____ % = \$ _____

Total Percentage planned for Small Business (es) _____ % = \$ _____

NOTE: 100% when combined, large and Small Business totals must equal 100%

2. Please indicate the total percentage of participation to be performed by small business. The percentage of work performed by Small Businesses that qualify for small business:

Small Business(es) _____ %

Small Disadvantaged Business _____ %

HUB Zone Small Business _____ %

Woman Owned Small Business _____ %

Service Disabled Veteran Owned SB _____ %

Veteran Owned Small Business _____ %

NOTE: When combined, large and Small Business totals must equal 100%

3. List principle supplies/services to be performed by Small Businesses:

Example: If a Small Business qualifies also as a WOSB and a SDVOSB, and you can add them to each category below in which they qualify. Name of Company Identify Type of Service/Supply Small Business (SB):

4. Describe the extent of commitment to use small businesses (for example, what types of commitments if any are in place for this specific acquisition either – small business prime, written contract, verbal, enforceable, non-enforceable, joint venturing, mentor protégé, etc.)

Additional Important Note for Other Than U.S. Small Businesses ONLY.

Small Business Subcontracting Plan is Required (FAR 52.219-9). Separate from Small Business Participation Plan, other than U.S. Small Business Offerors must also submit a subcontracting plan meeting the requirements of FAR 52.219-9 and DFARS 252.219-7003 (or DFARS 252.219-7004 if the offeror has a comprehensive subcontracting plan). Other than U.S. Small Businesses must submit acceptable subcontracting plans to be eligible for award. Subcontracting Plans shall reflect and be consistent with the commitments offered in the Small Business Participation Plan.

Section 00 45 00 - Representations and Certifications

CLAUSES INCORPORATED BY REFERENCE

52.203-11	Certification And Disclosure Regarding Payments To Influence Certain Federal Transactions	SEP 2007
52.209-13	Violation of Arms Control Treaties or Agreements -- Certification	NOV 2021
52.222-22	Previous Contracts And Compliance Reports	FEB 1999
52.222-38	Compliance With Veterans' Employment Reporting Requirements	FEB 2016
52.223-1	Biobased Product Certification	MAY 2012
52.223-4	Recovered Material Certification	MAY 2008
52.225-20	Prohibition on Conducting Restricted Business Operations in Sudan--Certification	AUG 2009
52.225-25	Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-- Representation and Certifications.	JUN 2020
52.229-11	Tax on Certain Foreign Procurements--Notice and Representation	JUN 2020
52.229-12	Tax on Certain Foreign Procurements	FEB 2021
52.236-28	Preparation of Proposals--Construction	OCT 1997
252.203-7005	Representation Relating to Compensation of Former DoD Officials	SEP 2022
252.204-7008	Compliance With Safeguarding Covered Defense Information Controls	OCT 2016
252.204-7016	Covered Defense Telecommunications Equipment or Services -- Representation	DEC 2019
252.204-7017	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services -- Representation	MAY 2021
252.225-7974 (Dev)	Representation Regarding Business Operations with the Maduro Regime (DEVIATION 2020-O0005)	FEB 2020
252.232-7016	Notice of Progress Payments or Performance-Based Payments	APR 2020

CLAUSES INCORPORATED BY FULL TEXT

52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS (MAY 2022)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 237310.

(2) The small business size standard is \$39,500,000.

(3) The small business size standard for a concern that submits an offer, other than on a construction or service acquisition, but proposes to furnish an end item that it did not itself manufacture, process, or produce is 500 employees if the acquisition--

(i) Is set aside for small business and has a value above the simplified acquisition threshold;

(ii) Uses the HUBZone price evaluation preference regardless of dollar value, unless the offeror waives the price evaluation preference; or

(iii) Is an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

(b)(1) If the provision at 52.204-7, System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the provision at 52.204-7, System for Award Management, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:

() Paragraph (d) applies.

() Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c) (1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

(i) 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in Part 13;

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) 52.203-18, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements--Representation. This provision applies to all solicitations.

(iv) 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the provision at 52.204-7, System for Award Management.

(v) 52.204-5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(vi) 52.204-26, Covered Telecommunications Equipment or Services--Representation. This provision applies to all solicitations.

(vii) 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations--Representation.

(viii) 52.209-5, Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(ix) 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.

(x) 52.214-14, Place of Performance--Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(xi) 52.215-6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(xii) 52.219-1, Small Business Program Representations (Basic, Alternates I, and II). This provision applies to solicitations when the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied part 19 in accordance with 19.000(b)(1)(ii).

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(C) The provision with its Alternate II applies to solicitations that will result in a multiple-award contract with more than one NAICS code assigned.

(xiii) 52.219-2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied part 19 in accordance with 19.000(b)(1)(ii).

(xiv) 52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222-26, Equal Opportunity.

(xv) 52.222-25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222-26, Equal Opportunity.

(xvi) 52.222-38, Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial products or commercial services.

(xvii) 52.223-1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or include the clause at 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xviii) 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA- designated items.

(xix) 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals--Representation. This provision applies to solicitations that include the clause at 52.204-7.)

(xx) 52.225-2, Buy American Certificate. This provision applies to solicitations containing the clause at 52.225-1.

(xxi) 52.225-4, Buy American--Free Trade Agreements--Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at 52.225- 3.

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$92,319, the provision with its Alternate II applies.

(D) If the acquisition value is \$92,319 or more but is less than \$100,000, the provision with its Alternate III applies.

(xxii) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-5.

(xxiii) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan--Certification. This provision applies to all solicitations.

(xxiv) 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certification. This provision applies to all solicitations.

(xxv) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

(2) The following representations or certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

(i) 52.204-17, Ownership or Control of Offeror.

(ii) 52.204-20, Predecessor of Offeror.

(iii) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.

(iv) 52.222-48, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Certification.

(v) 52.222-52 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Certification.

(vi) 52.223-9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

(vii) 52.227-6, Royalty Information.

(A) Basic.

(B) Alternate I.

(viii) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

(d) The Offeror has completed the annual representations and certifications electronically in SAM accessed through <https://www.sam.gov>. After reviewing the SAM information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code

referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause	Title	Date	Change
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Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on SAM.

(End of provision)

52.204-17 OWNERSHIP OR CONTROL OF OFFEROR (AUG 2020)

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

Commercial and Government Entity (CAGE) code means—

- (1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity by unique location; or
- (2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

Highest-level owner means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

Immediate owner means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: Ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

(b) The Offeror represents that it [____] has or [____] does not have an immediate owner. If the Offeror has more than one immediate owner (such as a joint venture), then the Offeror shall respond to paragraph (c) and if applicable, paragraph (d) of this provision for each participant in the joint venture.

(c) If the Offeror indicates ``has" in paragraph (b) of this provision, enter the following information:

Immediate owner CAGE code:

Immediate owner legal name: ____

(Do not use a ``doing business as" name)

Is the immediate owner owned or controlled by another entity?:

[☐] Yes or [☐] No.

(d) If the Offeror indicates ``yes" in paragraph (c) of this provision, indicating that the immediate owner is owned or controlled by another entity, then enter the following information:

Highest-level owner CAGE code:

Highest-level owner legal name:

(Do not use a ``doing business as" name)

(End of provision)

52.204-24 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at 52.204-26, Covered Telecommunications Equipment or Services--Representation, or in paragraph (v)(2)(i) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Products and Commercial Services. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at 52.204-26, or in paragraph (v)(2)(ii) of the provision at 52.212-3.

(a) Definitions. As used in this provision-

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to--

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered

telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to--

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services."

(d) Representations. The Offeror represents that--

(1) It [____] will, [____] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that--

It [____] does, [____] does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(e) Disclosures.

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment--

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services--

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment--

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services--

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)

52.204-26 COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES--REPRESENTATION (OCT 2020)

(a) Definitions. As used in this provision, "covered telecommunications equipment or services" and "reasonable inquiry" have the meaning provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(c) Representations.

(1) The Offeror represents that it [____] does, [____] does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(2) After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it [____] does, [____] does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

(End of provision)

**52.209-2 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS--
REPRESENTATION (NOV 2015)**

(a) Definitions. Inverted domestic corporation and subsidiary have the meaning given in the clause of this contract entitled Prohibition on Contracting with Inverted Domestic Corporations (52.209-10).

(b) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at 9.108-2(b) applies or the requirement is waived in accordance with the procedures at 9.108-4.

(c) Representation. The Offeror represents that--

(1) It [☐] is, [☐] is not an inverted domestic corporation; and

(2) It [☐] is, [☐] is not a subsidiary of an inverted domestic corporation.

(End of provision)

**52.209-11 REPRESENTATION BY CORPORATIONS REGARDING DELINQUENT TAX LIABILITY OR A
FELONY CONVICTION UNDER ANY FEDERAL LAW (FEB 2016)**

(a) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, the Government will not enter into a contract with any corporation that--

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that--

(1) It is [☐] is not [☐] a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(2) It is [☐] is not [☐] a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of provision)

52.209-12 CERTIFICATION REGARDING TAX MATTERS (OCT 2020)

(a) This provision implements section 523 of Division B of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts.

(b) If the Offeror is proposing a total contract price that will exceed \$5.5 million (including options), the Offeror shall certify that, to the best of its knowledge and belief, it--

(1) Has [] filed all Federal tax returns required during the three years preceding the certification;

(2) Has not [] been convicted of a criminal offense under the Internal Revenue Code of 1986; and

(3) Has not [], more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

(End of provision)

252.204-7007 ALTERNATE A, ANNUAL REPRESENTATIONS AND CERTIFICATIONS (MAY 2021)

Substitute the following paragraphs (b), (d) and (e) for paragraphs (b) and (d) of the provision at FAR 52.204-8:

(b)(1) If the provision at FAR 52.204-7, System for Award Management, is included in this solicitation, paragraph (e) of this provision applies.

(2) If the provision at FAR 52.204-7, System for Award Management, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (e) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:

X (i) Paragraph (e) applies.

 (ii) Paragraph (e) does not apply and the Offeror has completed the individual representations and certifications in the solicitation.

(d)(1) The following representations or certifications in the SAM database are applicable to this solicitation as indicated:

(i) 252.204-7016, Covered Defense Telecommunications Equipment or Services--Representation. Applies to all solicitations.

(ii) 252.216-7008, Economic Price Adjustment--Wage Rates or Material Prices Controlled by a Foreign Government. Applies to solicitations for fixed-price supply and service contracts when the contract is to be performed wholly or in part in a foreign country, and a foreign government controls wage rates or material prices and may during contract performance impose a mandatory change in wages or prices of materials.

(iii) 252.225-7042, Authorization to Perform. Applies to all solicitations when performance will be wholly or in part in a foreign country.

(iv) 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services--Representations. Applies to solicitations for the acquisition of commercial satellite services.

(v) 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism. Applies to all solicitations expected to result in contracts of \$150,000 or more.

(vi) 252.229-7012, Tax Exemptions (Italy)--Representation. Applies to solicitations when contract performance will be in Italy.

(vii) 252.229-7013, Tax Exemptions (Spain)--Representation. Applies to solicitations when contract performance will be in Spain.

(viii) 252.247-7022, Representation of Extent of Transportation by Sea. Applies to all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold.

(2) The following representations or certifications in SAM are applicable to this solicitation as indicated by the Contracting Officer: [Contracting Officer check as appropriate.]

___ (i) 252.209-7002, Disclosure of Ownership or Control by a Foreign Government.

___ (ii) 252.225-7000, Buy American--Balance of Payments Program Certificate.

___ (iii) 252.225-7020, Trade Agreements Certificate.

___ Use with Alternate I.

___ (iv) 252.225-7031, Secondary Arab Boycott of Israel.

___ (v) 252.225-7035, Buy American--Free Trade Agreements--Balance of Payments Program Certificate.

___ Use with Alternate I.

___ Use with Alternate II.

___ Use with Alternate III.

___ Use with Alternate IV.

___ Use with Alternate V.

___ (vi) 252.226-7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities.

___ (vii) 252.232-7015, Performance-Based Payments--Representation.

(e) The Offeror has completed the annual representations and certifications electronically via the SAM website at <https://www.acquisition.gov/>. After reviewing the SAM database information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in FAR 52.204-8(c) and paragraph (d) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard

applicable to the NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [Offeror to insert changes, identifying change by provision number, title, date ____]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR/DFARS provision No.	Title	Date	Change

Any changes provided by the Offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications located in the SAM database.

(End of provision)

Section 00 72 00 - General Conditions

CLAUSES INCORPORATED BY REFERENCE

52.202-1	Definitions	JUN 2020
52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	MAY 2014
52.203-6	Restrictions On Subcontractor Sales To The Government	JUN 2020
52.203-7	Anti-Kickback Procedures	JUN 2020
52.203-8	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	JUN 2020
52.203-13	Contractor Code of Business Ethics and Conduct	NOV 2021
52.203-16	Preventing Personal Conflicts of Interest	JUN 2020
52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights	JUN 2020
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	JAN 2017
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper	MAY 2011
52.204-9	Personal Identity Verification of Contractor Personnel	JAN 2011
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	JUN 2020
52.204-13	System for Award Management Maintenance	OCT 2018
52.204-18	Commercial and Government Entity Code Maintenance	AUG 2020
52.204-19	Incorporation by Reference of Representations and Certifications.	DEC 2014
52.204-21	Basic Safeguarding of Covered Contractor Information Systems	NOV 2021
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities	NOV 2021
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	NOV 2021
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	NOV 2021
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters	OCT 2018
52.209-10	Prohibition on Contracting With Inverted Domestic Corporations	NOV 2015
52.210-1	Market Research	NOV 2021
52.215-2	Audit and Records--Negotiation	JUN 2020
52.215-10	Price Reduction for Defective Certified Cost or Pricing Data	AUG 2011
52.215-11	Price Reduction for Defective Certified Cost or Pricing Data--Modifications	JUN 2020
52.215-12	Subcontractor Certified Cost or Pricing Data	JUN 2020
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data -- Modifications	NOV 2021
52.219-6	Notice Of Total Small Business Set-Aside	NOV 2020
52.219-8	Utilization of Small Business Concerns	OCT 2022
52.219-9	Small Business Subcontracting Plan	OCT 2022

52.219-16	Liquidated Damages-Subcontracting Plan	SEP 2021
52.222-1	Notice To The Government Of Labor Disputes	FEB 1997
52.222-3	Convict Labor	JUN 2003
52.222-4	Contract Work Hours and Safety Standards - Overtime Compensation	MAY 2018
52.222-6	Construction Wage Rate Requirements	AUG 2018
52.222-7	Withholding of Funds	MAY 2014
52.222-8	Payrolls and Basic Records	JUL 2021
52.222-9	Apprentices and Trainees	JUL 2005
52.222-10	Compliance with Copeland Act Requirements	FEB 1988
52.222-11	Subcontracts (Labor Standards)	MAY 2014
52.222-12	Contract Termination-Debarment	MAY 2014
52.222-13	Compliance With Construction Wage Rate Requirements and Related Regulations	MAY 2014
52.222-14	Disputes Concerning Labor Standards	FEB 1988
52.222-15	Certification of Eligibility	MAY 2014
52.222-21	Prohibition Of Segregated Facilities	APR 2015
52.222-26	Equal Opportunity	SEP 2016
52.222-27	Affirmative Action Compliance Requirements for Construction	APR 2015
52.222-30	Construction Wage Rate Requirements--Price Adjustment (None or Separately Specified Method)	AUG 2018
52.222-35	Equal Opportunity for Veterans	JUN 2020
52.222-36	Equal Opportunity for Workers with Disabilities	JUN 2020
52.222-37	Employment Reports on Veterans	JUN 2020
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	DEC 2010
52.222-50	Combating Trafficking in Persons	NOV 2021
52.222-54	Employment Eligibility Verification	MAY 2022
52.222-55	Minimum Wages for Contractor Workers Under Executive Order 14026	JAN 2022
52.222-62	Paid Sick Leave Under Executive Order 13706	JAN 2022
52.223-2	Affirmative Procurement of Biobased Products Under Service and Construction Contracts	SEP 2013
52.223-5	Pollution Prevention and Right-to-Know Information	MAY 2011
52.223-6	Drug-Free Workplace	MAY 2001
52.223-17	Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts	AUG 2018
52.223-18	Encouraging Contractor Policies To Ban Text Messaging While Driving	JUN 2020
52.223-20	Aerosols	JUN 2016
52.223-21	Foams	JUN 2016
52.227-1	Authorization and Consent	JUN 2020
52.227-2	Notice And Assistance Regarding Patent And Copyright Infringement	JUN 2020
52.227-4	Patent Indemnity-Construction Contracts	DEC 2007
52.228-2	Additional Bond Security	OCT 1997
52.228-5	Insurance - Work On A Government Installation	JAN 1997
52.228-11	Individual Surety--Pledge of Assets	FEB 2021
52.228-12	Prospective Subcontractor Requests for Bonds	MAY 2014
52.228-15	Performance and Payment Bonds--Construction	JUN 2020
52.229-3	Federal, State And Local Taxes	FEB 2013
52.230-2	Cost Accounting Standards	JUN 2020
52.232-23	Assignment Of Claims	MAY 2014

52.232-33	Payment by Electronic Funds Transfer--System for Award Management	OCT 2018
52.232-39	Unenforceability of Unauthorized Obligations	JUN 2013
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	NOV 2021
52.236-2	Differing Site Conditions	APR 1984
52.236-3	Site Investigation and Conditions Affecting the Work	APR 1984
52.236-4	Physical Data	APR 1984
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	APR 1984
52.236-10	Operations and Storage Areas	APR 1984
52.236-11	Use and Possession Prior to Completion	APR 1984
52.236-12	Cleaning Up	APR 1984
52.236-15	Schedules for Construction Contracts	APR 1984
52.236-17	Layout of Work	APR 1984
52.242-5	Payments to Small Business Subcontractors	JAN 2017
52.244-6	Subcontracts for Commercial Products and Commercial Services	OCT 2022
252.201-7000	Contracting Officer's Representative	DEC 1991
252.203-7000	Requirements Relating to Compensation of Former DoD Officials	SEP 2011
252.203-7002	Requirement to Inform Employees of Whistleblower Rights	SEP 2013
252.203-7003	Agency Office of the Inspector General	AUG 2019
252.204-7000	Disclosure Of Information	OCT 2016
252.204-7003	Control Of Government Personnel Work Product	APR 1992
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting	DEC 2019
252.215-7002	Cost Estimating System Requirements	DEC 2012
252.225-7048	Export-Controlled Items	JUN 2013
252.232-7003	Electronic Submission of Payment Requests and Receiving Reports	DEC 2018
252.232-7010	Levies on Contract Payments	DEC 2006
252.232-7017	Accelerating Payments to Small Business Subcontractors--Prohibition on Fees and Consideration	APR 2020

CLAUSES INCORPORATED BY FULL TEXT

52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

The Contractor shall be required to (a) commence work under this contract within **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 **660 days**.

*The Contracting Officer shall specify either a number of days after the date the contractor receives the notice to proceed, or a calendar date.

(End of clause)

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

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of **\$1,233.00** (Contract Administration) and **\$1,576.00** after 15 February 2024 (Lost Power Generation) for each calendar day of delay until the work is completed or accepted.

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

(End of clause)

52.211-18 VARIATION IN ESTIMATED QUANTITY (APR 1984)

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

52.217-7 OPTION FOR INCREASED QUANTITY--SEPARATELY PRICED LINE ITEM (MAR 1989)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within **30 days**. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within **30 days** provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least **60 days** before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed **660 days after the notice to proceed**.

(End of clause)

52.219-14 LIMITATIONS ON SUBCONTRACTING (OCT 2022)

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

(b) Definition. Similarly situated entity, as used in this clause, means a first-tier subcontractor, including an independent contractor, that--

(1) Has the same small business program status as that which qualified the prime contractor for the award (e.g., for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

(2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

(c) Applicability. This clause applies only to--

(1) Contracts that have been set aside for any of the small business concerns identified in 19.000(a)(3);

(2) Part or parts of a multiple-award contract that have been set aside for any of the small business concerns identified in 19.000(a)(3);

(3) Contracts that have been awarded on a sole-source basis in accordance with subparts 19.8, 19.13, 19.14, and 19.15;

(4) Orders expected to exceed the simplified acquisition threshold and that are--

(i) Set aside for small business concerns under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F); or

(ii) Issued directly to small business concerns under multiple-award contracts as described in 19.504(c)(1)(ii);

(5) Orders, regardless of dollar value, that are--

(i) Set aside in accordance with subparts 19.8, 19.13, 19.14, or 19.15 under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F); or

(ii) Issued directly to concerns that qualify for the programs described in subparts 19.8, 19.13, 19.14, or 19.15 under multiple-award contracts, as described in 19.504(c)(1)(ii); and

(6) Contracts using the HUBZone price evaluation preference to award to a HUBZone small business concern unless the concern waived the evaluation preference.

(d) Independent contractors. An independent contractor shall be considered a subcontractor.

(e) Limitations on subcontracting. By submission of an offer and execution of a contract, the Contractor agrees that in performance of a contract assigned a North American Industry Classification System (NAICS) code for--

(1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;

(3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 85 percent subcontract amount that cannot be exceeded; or

(4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 75 percent subcontract amount that cannot be exceeded.

(f) The Contractor shall comply with the limitations on subcontracting as follows:

(1) For contracts, in accordance with paragraphs (c)(1), (2), (3) and (6) of this clause--

[Contracting Officer check as appropriate.]

___ By the end of the base term of the contract and then by the end of each subsequent option period; or

___ By the end of the performance period for each order issued under the contract.

(2) For orders, in accordance with paragraphs (c)(4) and (5) of this clause, by the end of the performance period for the order.

(g) A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (e) of this clause will be performed by the aggregate of the joint venture participants.

(1) In a joint venture comprised of a small business protege and its mentor approved by the Small Business Administration, the small business protege shall perform at least 40 percent of the work performed by the joint venture. Work performed by the small business protege in the joint venture must be more than administrative functions.

(2) In an 8(a) joint venture, the 8(a) participant(s) shall perform at least 40 percent of the work performed by the joint venture. Work performed by the 8(a) participants in the joint venture must be more than administrative functions.

(End of clause)

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

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

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

Goals for minority participation for each trade	Goals for female participation for each trade
4.1%	6.9%

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the --

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is **Montana, Valley County, Fort Peck**

(End of provision)

52.225-9 BUY AMERICAN—CONSTRUCTION MATERIALS (OCT 2022)

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

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

(1) Means any item of supply (including construction material) that is--

(i) A commercial product (as defined in paragraph (1) of the definition of "commercial product" at Federal Acquisition Regulation (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 a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

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

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to U.S. supply chain resiliency. The list of critical items is at FAR 25.105.

Domestic construction material means--

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both--

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

(ii) A construction material manufactured in the United States, if--

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components".

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

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

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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

(b) Domestic preference.

(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 domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction materials, excluding COTS fasteners. (See FAR 12.505(a)(2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial product or to the construction materials or components listed by the Government as follows:

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

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

(i) The cost of domestic construction material would be unreasonable.

(A) For domestic construction material that is not a critical item or does not contain critical components.

(1) The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

(2) For construction material that is not a COTS item and does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that is manufactured in the United States and does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that exceeds 55 percent domestic content as a domestic offer and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(A)(1) of this clause.

(3) The procedures in paragraph (b)(3)(i)(A)(2) of this clause will no longer apply as of January 1, 2030.

(B) For domestic construction material that is a critical item or contains critical components.

(1) The cost of a particular domestic construction material that is a critical item or contains critical components, subject to the requirements of the Buy American statute, is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent plus the additional preference factor identified for the critical item or construction material containing critical components listed at FAR 25.105.

(2) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest foreign offer of construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer, and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(B)(1) of this clause.

(3) The procedures in paragraph (b)(3)(i)(B)(2) of this clause will no longer apply as of January 1, 2030.

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

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

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

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

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

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

(2) If the Government determines after contract award that an exception to the Buy American 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)(3)(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:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) *\
Item 1:			
Foreign construction material....	_____	_____	_____
Domestic construction material...	_____	_____	_____
Item 2:			
Foreign construction material....	_____	_____	_____
Domestic construction material...	_____	_____	_____

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

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

[Include other applicable supporting information.]

(End of clause)

52.225-11 BUY AMERICAN--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (DEC 2022)

(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 product (as defined in paragraph (1) of the definition of "commercial product" at Federal Acquisition Regulation (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

(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.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to U.S. supply chain resiliency. The list of critical items is at FAR 25.105.

Designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, 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, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, 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) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both--

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

(ii) A construction material manufactured in the United States, if--

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components".

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

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

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

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.

Free Trade Agreement country construction material means a construction material that—

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

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

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.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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 domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction material, excluding COTS fasteners. (See FAR 12.505(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 product 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.

(A) For domestic construction material that is not a critical item or does not contain critical components.

(1) 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 20 percent;

(2) For construction material that is not a COTS item and does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(4)(i)(A)(1) of this clause.

(3) The procedures in paragraph (b)(4)(i)(A)(2) of this clause will no longer apply as of January 1, 2030.

(B) For domestic construction material that is a critical item or contains critical components.

(1) The cost of a particular domestic construction material that is a critical item or contains critical components, subject to the requirements of the Buy American statute, is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent plus the additional preference factor identified for the critical item or construction material containing critical components listed at FAR 25.105.

(2) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer, and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(4)(i)(B)(1) of this clause.

(3) The procedures in paragraph (b)(4)(i)(B)(2) of this clause will no longer apply as of January 1, 2030.

(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

(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:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) *
Item 1:			
Foreign construction material....			
Domestic construction material...			
Item 2:			
Foreign construction material....			
Domestic construction material...			

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

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

[Include other applicable supporting information.]

(End of clause)

(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.

(End of provision)

52.228-14 IRREVOCABLE LETTER OF CREDIT (NOV 2014)

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

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

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

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

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

(i) For contracts subject to 40 U.S.C. chapter 31, subchapter III, Bonds, the later of--

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

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

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

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

(A) 90 days following final payment; or

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

(d)(1) Only federally insured financial institutions rated investment grade by a commercial rating service shall issue or confirm the ILC.

(2) Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(3) The Offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institutions have the required credit rating as of the date of issuance of the ILC.

(4) The current rating for a financial institution is available through any of the following rating services registered with the U.S. Securities and Exchange Commission (SEC) as a Nationally Recognized Statistical Rating Organization (NRSRO). NRSRO's can be located at the Web site <http://www.sec.gov/answers/nrsro.htm> maintained by the SEC.

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

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

Issue Date _ _ _ _

IRREVOCABLE LETTER OF CREDIT NO. ____

Account party's name ____ _

Account party's address ____ _

For Solicitation No. ____ _ (for reference only)

TO: [____ U.S. Government agency]

[____ U.S. Government agency's address]

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

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

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

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

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, International Chamber of Commerce Publication No. ____ -- (Insert version in effect at the time of ILC issuance, e.g., "Publication 600, 2006 edition") and to the extent not inconsistent therewith, to the laws of ____ --[State of confirming financial institution, if any, otherwise State of issuing financial institution].

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

Sincerely,

[____ Issuing financial institution]

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

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

(Date) ____

Our Letter of Credit Advice Number ____

Beneficiary: ____ [U.S. Government agency]

Issuing Financial Institution: ____

Issuing Financial Institution's LC No.: ____

Gentlemen:

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

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

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

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

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

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

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, International Chamber of Commerce Publication No. ____ -- (Insert version in effect at the time of ILC issuance, e.g., ``Publication 600, 2006 edition") and to the extent not inconsistent therewith, to the laws of ____ --[State of confirming financial institution].

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

Sincerely,

[Confirming financial institution]

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

SIGHT DRAFT

[City, State]

(Date) ____

[Name and address of financial institution]

Pay to the order of ____ [Beneficiary Agency] ____ the sum of United States ____ This draft is drawn under

Irrevocable Letter of Credit No. ____

____ [Beneficiary Agency]

By: ____

(End of clause)

52.232-5 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:

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

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

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

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

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

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

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

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

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

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

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

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

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold

or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

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

(Name)

(Title)

(Date)

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

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

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

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

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

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

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

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

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

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

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

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 6305).

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

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

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

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

(End of clause)

52.232-16 PROGRESS PAYMENTS (NOV 2021)

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

(a) Computation of amounts.

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

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

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

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

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

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

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

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

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

(ii) Costs incurred by subcontractors or suppliers.

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

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

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

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

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

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

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

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

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

(9) The costs applicable to items delivered, invoiced, and accepted shall not include costs in excess of the contract price of the items.

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

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

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

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

(i) Failure to make progress or

(ii) Unsatisfactory financial condition.

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

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

(5) The fair value of the undelivered work is less than the amount of unliquidated progress payments for that work.

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

(d) Title.

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

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

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

(ii) Special tooling and special test equipment to which the Government is to acquire title;

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

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

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

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

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

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

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

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

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

(e) Risk of loss. Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is lost (see 45.101).

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

(g) Reports, forms, and access to records. (1) The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information (including estimates to complete) reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(2) The Contractor shall furnish estimates to complete that have been developed or updated within six months of the date of the progress payment request. The estimates to complete shall represent the Contractor's best estimate of total costs to complete all remaining contract work required under the contract. The estimates shall include sufficient detail to permit Government verification.

(3) Each Contractor request for progress payment shall:

(i) Be submitted on Standard Form 1443, Contractor's Request for Progress Payment, or the electronic equivalent as required by agency regulations, in accordance with the form instructions and the contract terms; and

(ii) Include any additional supporting documentation requested by the Contracting Officer.

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

(i) Reservations of rights.

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

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

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

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

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

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

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

(1) The amounts included are limited to--

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

(ii) Any unpaid subcontractor requests for financing payments.

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

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

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

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are in conformance with the requirements of FAR 32.504(e); and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if--

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(4) If the financing payments are in the form of performance-based payments, the terms of the subcontract or interdivisional order concerning payments--

(i) Are substantially similar to the Performance-Based Payments clause at FAR 52.232-32 and meet the criteria for, and definition of, performance-based payments in FAR Part 32;

(ii) Are in conformance with the requirements of FAR 32.504(f); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if--

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(5) If the financing payments are in the form of commercial product or commercial service financing payments, the terms of the subcontract or interdivisional order concerning payments--

(i) Are constructed in accordance with FAR 32.206(c) and included in a subcontract for a commercial product or commercial service purchase that meets the definition and standards for acquisition of commercial products and commercial services in FAR parts 2 and 12;

(ii) Are in conformance with the requirements of FAR 32.504(g); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if--

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.

(7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.

(8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

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

(k) Limitations on undefinitized contract actions. Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

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

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

(End of clause)

52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (JAN 2017)

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

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

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

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

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

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

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

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

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

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

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

(i) Name and address of the Contractor.

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

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

(iv) Description of work or services performed.

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

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

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

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

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

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

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

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer--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 actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under 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 use:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Make such payment within--

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

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

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under 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 paragraph (e)(1) of this clause; and

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

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

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

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

(f) Third-party deficiency reports—

(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a “second-tier subcontractor”) a written notice in accordance with 40 U.S.C. 3133, asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause--

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--

(i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of 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 Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

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

(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 line item or subline item, if applicable; and

(iv) Contractor point of contact.

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

(End of clause)

52.233-1 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 the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C. chapter 71. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

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

(2)(i) The 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.

(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.

(End of clause)

52.233-3 PROTEST AFTER AWARD (AUG. 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of clause)

52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

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

(End of clause)

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

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

(End of clause)

52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of clause)

52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(End of clause)

52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of clause)

52.236-8 OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

(End of clause)

52.236-13 ACCIDENT PREVENTION (NOV 1991)

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

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

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

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

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

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

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

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

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department

of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

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

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

(End of clause)

52.236-14 AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(End of clause)

52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

(End of clause)

52.236-26 PRECONSTRUCTION CONFERENCE (FEB 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

(End of clause)

52.242-14 SUSPENSION OF WORK (APR 1984)

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

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed—

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of clause)

52.243-4 CHANGES (JUN 2007)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes--

(1) In the specifications (including drawings and designs);

(2) In the method or manner of performance of the work;

(3) In the Government-furnished property or services; or

(4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating

(1) the date, circumstances, and source of the order and

(2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any

increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after

(1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(End of clause)

52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not--

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

(End of clause)

52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)

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

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

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

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

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

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

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

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

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

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

- (2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and
 - (3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.
 - (h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
 - (i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.
 - (j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.
- (End of clause)

52.248-3 VALUE ENGINEERING--CONSTRUCTION (OCT 2020)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) below.

(b) Definitions. "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) below).

"Value engineering change proposal (VECP)" means a proposal that--

- (1) Requires a change to this, the instant contract, to implement; and
- (2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change--
 - (i) In deliverable end item quantities only; or
 - (ii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs(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.

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

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.

Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing.

(1) Rates. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by

- (i) 45 percent for fixed-price contracts or
- (ii) 75 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to--

- (i) Accept the VECP;
 - (ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and
 - (iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.
- (g) 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 \$75,000 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)

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (APR 2012)

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

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

(1) Stop work as specified in the notice.

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

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

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

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

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

(7) Complete performance of the work not terminated.

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

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

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

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

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

may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (g) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, for the loss of the Government property.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

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

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—

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

- (i) Acts of God or of the public enemy,
 - (ii) Acts of the Government in either its sovereign or contractual capacity,
 - (iii) Acts of another Contractor in the performance of a contract with the Government,
 - (iv) Fires,
 - (v) Floods,
 - (vi) Epidemics,
 - (vii) Quarantine restrictions,
 - (viii) Strikes,
 - (ix) Freight embargoes,
 - (x) Unusually severe weather, or
 - (xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
- (2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.
- (d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.
- (End of clause)

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

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

www.acquisition.gov

(End of clause)

52.252-4 ALTERATIONS IN CONTRACT (APR 1984)

Portions of this contract are altered as follows:

N/A

(End of clause)

52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (NOV 2020)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any DFARS (48 CFR 2) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of clause)

252.236-7000 MODIFICATION PROPOSALS - PRICE BREAKDOWN. (DEC 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown --

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for --

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (DEC 2022)

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

(b) In accordance with 10 U.S.C. 3862(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

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

(Official's Name)

(Title)

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

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

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

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

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

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

(End of clause)

Section 00 73 00 - Supplementary Conditions

WAGE DETERMINATION

"General Decision Number: MT20230074 01/06/2023

Superseded General Decision Number: MT20220074

State: Montana

Construction Type: Heavy

County: Valley County in Montana.

HEAVY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered1-6-202 contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered	. Executive Order 14026	
into on or after January 30,	generally applies to the	
2022, or the contract is	contract.	
renewed or extended (e.g., an	. The contractor must pay	
option is exercised) on or	all covered workers at	
after January 30, 2022:	least \$16.20 per hour (or	
	the applicable wage rate	
	listed on this wage	
	determination, if it is	
	higher) for all hours	
	spent performing on the	
	contract in 2023.	
If the contract was awarded on	. Executive Order 13658	
or between January 1, 2015 and	generally applies to the	
January 29, 2022, and the	contract.	
contract is not renewed or	. The contractor must pay all	
extended on or after January	covered workers at least	
30, 2022:	\$12.15 per hour (or the	
	applicable wage rate listed	
	on this wage determination,	
	if it is higher) for all	
	hours spent performing on	
	that contract in 2023.	

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date
0 01/06/2023

ELEC0233-019 06/01/2022

	Rates	Fringes
ELECTRICIAN.....	\$ 33.90	2.5%+15.29

ENGI0400-013 05/01/2013		

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
(Zone 1)		
(1) A-frame truck Crane,		
oiler (except crane).	\$ 23.47	10.40
(2) Crane		
Oiler, Bulldozer, Roller		
(Dirt and Grade		
Compaction), Backhoe.....	\$ 23.94	10.40
(3) Mechanic.....	\$ 24.34	10.40
(4) Cranes, 25 tons - 44		
tons.....	\$ 27.00	11.40
(5) Cranes, 45 tons to and		
incl. 74 tons.....	\$ 28.00	11.40
(6) Cranes, 75 tons to and		
incl. 149 tons; Cranes,		
Whirley (All).....	\$ 29.00	11.40
(7) Cranes, 150 tons to		
including 250 tons (add		
\$1.00		
for every 100 tons over		
250 tons); Crane, Stiff-		
Leg or		
Derrick; Helicopter		
Hoist; Crane, Tower (all)...	\$ 30.00	11.40

ZONE DEFINITIONS FOR POWER EQUIPMENT OPERATORS:

The zone hourly rates applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the nearest County Court House of the following listed towns to the center of the job:

BILLINGS, BOZEMAN, BUTTE, GREAT FALLS, HELENA, KALISPELL, MISSOULA

Zone 1: 0 to 30 miles - Base Pay
Zone 2: 30 to 60 miles - Base Pay + \$3.50
Zone 3: Over 60 miles - Base Pay + \$5.50

IRON0732-018 06/01/2022

	Rates	Fringes
IRONWORKER: Reinforcing and		

Structural.....	\$ 33.95	24.04

SUMT2011-050 02/08/2011		
	Rates	Fringes
CARPENTER (Form Work Only).....	\$ 24.30	7.80
CARPENTER, Excludes Form Work....	\$ 21.13	7.00
LABORER: Common or General.....	\$ 17.99	5.90
LABORER: Pipelayer.....	\$ 21.10	5.46
LABORER: Landscape and Irrigation.....	\$ 15.14 **	1.30
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 23.53	8.05
OPERATOR: Excavator.....	\$ 23.62	8.05
OPERATOR: Grader/Blade.....	\$ 25.44	8.45
OPERATOR: Loader (Front End)....	\$ 24.58	8.05
OPERATOR: Scraper.....	\$ 23.00	6.76
TRUCK DRIVER: Dump Truck.....	\$ 19.99	5.09

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

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

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)).

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

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 National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

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

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

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

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

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

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

Administrative Review Board
U.S. Department of Labor

200 Constitution Avenue, N.W.
Washington, DC 20210

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

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END OF GENERAL DECISIO"

INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	Destination	N/A	Destination	Government
0002	Destination	N/A	Destination	Government
0003	Destination	N/A	Destination	Government
0004	Destination	N/A	Destination	Government
0005	Destination	N/A	Destination	Government
0006	Destination	N/A	Destination	Government
0007	Destination	N/A	Destination	Government
0008	Destination	N/A	Destination	Government
0009	Destination	N/A	Destination	Government
0010	Destination	N/A	Destination	Government
0011	Destination	N/A	Destination	Government

DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	DODAAC / CAGE
0001	635 dys. ANP	1	COE FT PECK PROJECT OFFICE DALE PUGH USACE OMAHA CENWO-OD-FP 301 EAST KANSAS STREET FORT PECK MT 59223-0208 406-526-3405 FOB: Destination	968609
0002	635 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	968609
0003	635 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	968609

0004	635 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	968609
0005	635 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	968609
0006	635 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	968609
0007	635 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	968609
0008	635 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	968609
0009	635 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	968609
0010	635 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	968609
0011	635 dys. ANP	300	(SAME AS PREVIOUS LOCATION) FOB: Destination	968609

CLAUSES INCORPORATED BY FULL TEXT

Antiterrorism (AT)/Operations Security (OPSEC) Provisions

1. General security requirements and guidance: The security requirements described below apply to all contract personnel (including employees of the prime Contractor (“Contractor”) and all subcontractor employees) supporting the performance requirements of this contract. The Contractor is responsible for compliance with these security requirements. Questions regarding security matters shall be addressed to the designated Government representative (e.g., Contracting Officer Representative (COR), Requiring Activity (RA) representative, or Contracting Officer (if a COR or other RA representative is not appointed)). Contract personnel are critical to the overall security and safety of US Army Corps of Engineers (USACE) installations, facilities and activities, and security awareness training contributes to those efforts. The Department of Defense (DoD) and Army security training requirements specified below, if applicable, are performance requirements; all applicable contract personnel shall complete initial training within 30 days of contract award or the date new contract personnel begin performance on the contract. Within five business days from the completion of training, the Contractor shall provide written documentation (e.g., email or memorandum) to the Government representative. The documentation shall include the names of contract personnel trained and which training they completed; the Contractor shall maintain training records as part of their contract files and be prepared to provide copies of training certificates to the Government representative. Contractor personnel and vehicles are subject to search when entering federal installations. Additionally, all contract personnel shall comply with Force Protection Condition (FPCON) measures, Random Antiterrorism Measures (commonly referred to as “RAMs”), and Health Protection Condition (HPCON) measures. The Contractor is responsible for meeting performance requirements during elevated FPCON and/or HPCON levels in accordance with applicable RA plans and procedures—this includes identifying mission essential and non-mission essential personnel. In addition to the changes otherwise authorized by the changes clause of this contract, should the FPCON or HPCON levels at any individual facility or installation change, the Government may implement security changes that affect contract personnel. The Contractor shall ensure all contract personnel are aware of their security responsibilities, including any site-specific requirements identified in local policies or procedures.

2. Antiterrorism (AT) Level I training: All contract personnel requiring routine access to Army installations, facilities, and controlled access areas, or requiring network access shall complete initial and annual refresher AT Level I awareness training. Online AT Level I awareness training is available at <https://jko.jten.mil/> (website subject to change).

3. Physical security and access control requirements: All contract personnel requiring physical access to a federal installation or facility shall comply with the access control procedures of that location. Contract personnel requiring unescorted access to meet contract performance requirements on a DoD installation in the US shall be vetted by the installation/facility Provost Marshal/Directorate of Emergency Services/Security Office using the National Crime Information Center-Interstate Identification Index (commonly referred to as "NCIC-III") and Terrorist Screening Database (commonly referred to as "TSDB"). Contract personnel shall comply with all personal identity verification requirements specified in installation/facility policies and procedures. Contract personnel who do not meet requirements for unescorted access to USACE facilities shall coordinate escorted access with the Government representative, as needed. Contract personnel who receive keys, access cards, or lock combinations that provide access to government-owned property shall comply with key and lock control procedures of the RA.

6. Suspicious Activity Reporting training (e.g. iWATCH, CorpsWatch, or See Something, Say Something): All contract personnel shall receive initial and annual refresher training from the RA representative on the local suspicious activity reporting program. This locally developed training provides contract personnel with general information on suspicious behavior, and guidance on reporting suspicious activity to the project manager, security representative or law enforcement entity.

9. Training requirements for the protection of sensitive information: All contract personnel with access to critical information (as identified in the RA's OPSEC Program) shall complete initial and annual refresher OPSEC Level I Awareness training, which is available at the following websites: <https://www.iad.gov/ioss/>, or <http://www.cdse.edu/catalog/operations-security.html> (websites subject to change). All contract personnel with access to Controlled Unclassified Information (CUI) shall complete initial and annual refresher CUI training in accordance with applicable Army policy.

14. Pre-screen candidates using E-Verify Program: Contractors shall comply with the requirements set forth in FAR clause 52.222-54 Employment Eligibility Verification and FAR Subpart 22.18 in using the E-Verify Program at (<https://www.e-verify.gov/>) (website subject to change) to meet the contract employment eligibility requirements. Contractors are encouraged to cooperate with Federal and State agencies responsible for enforcing labor requirements to include eligibility for employment under United States immigration laws in accordance with FAR 22.102-1(i). An initial list of verified/eligible candidates shall be provided to the COR no later than three business days after the initial contract award. When contracts are with individuals, the individuals will be required to complete a Form I-9, Employment Eligibility Verification, and submit it to the Contracting Officer to become part of the official contract file.