

<b>SOLICITATION, OFFER, AND AWARD</b> <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO.  W9128F23R0014	2. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED  15-Mar-2023	PAGE OF PAGES  1 OF 81
---	--	--	-----------------------------------	------------------------------

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

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

7. ISSUED BY CODE W9128F  U.S. ARMY CORPS OF ENGINEERS, OMAHA DIST CONTRACTING OFFICE 1616 CAPITOL AVENUE OMAHA NE 68102-4901  TEL: FAX:	8. ADDRESS OFFER TO <i>(If Other Than Item 7)</i> CODE  <div style="text-align: center; font-weight: bold; padding: 10px;">See Item 7</div> TEL: FAX:
---	---

9. FOR INFORMATION CALL:	A. NAME BRIANNA BOEHNE	B. TELEPHONE NO. <i>(Include area code) (NO COLLECT CALLS)</i> 402-995-2668
--------------------------	---------------------------	--

SOLICITATION

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

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

The offeror hereby agrees to do all work described in the documents entitled:  
 Intake Crane Rail Replacement, Big Bend Dam, SD

RETURN WITH OFFER: INFORMATION REQUIRED BY SECTION 00 10 00 (SF1442), SECTION 00 22 00, AND SECTION 00 45 00.

THIS SOLICITATION IS UNRESTRICTED AND OPEN TO BOTH SMALL AND LARGE BUSINESS

All offers must be returned electronically. See Section 00 21 00 INSTRUCTIONS TO OFFERORS, "General Bidding Information" for instruction on submitting offers.

11. The Contractor shall begin performance within <u>10</u> calendar days and complete it within <u>549</u> calendar days after receiving <input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. This performance period is <input checked="" type="checkbox"/> mandatory, <input type="checkbox"/> negotiable. (See FAR 52.211-10 _____.)	
---	--

12 A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? <i>(If "YES," indicate within how many calendar days after award in Item 12B.)</i>  <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	12B. CALENDAR DAYS  10
--	------------------------------

13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and \_\_\_\_\_ copies to perform the work required are due at the place specified in Item 8 by 02:00 PM (hour) local time 14Apr 2023 (date). If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.

B. An offer guarantee ☐ is, ☒ is not required.

C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.

D. Offers providing less than 60 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

<b>SOLICITATION, OFFER, AND AWARD (Continued)</b> <i>(Construction, Alteration, or Repair)</i>										
<b>OFFER (Must be fully completed by offeror)</b>										
<b>14. NAME AND ADDRESS OF OFFEROR</b> <i>(Include ZIP Code)</i>					<b>15. TELEPHONE NO.</b> <i>(Include area code)</i>					
<div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 40px;"></div>					<b>16. REMITTANCE ADDRESS</b> <i>(Include only if different than Item 14)</i>  <b>See Item 14</b>					
<b>CODE</b>		<b>FACILITY CODE</b>								
<b>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></b>										
<b>AMOUNTS</b>		<b>SEE SCHEDULE OF PRICES</b>								
<b>18. The offeror agrees to furnish any required performance and payment bonds.</b>										
<b>19. ACKNOWLEDGMENT OF AMENDMENTS</b> <i>(The offeror acknowledges receipt of amendments to the solicitation -- give number and date of each)</i>										
AMENDMENT NO.										
DATE										
<b>20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER</b> <i>(Type or print)</i>					<b>20B. SIGNATURE</b>				<b>20C. OFFER DATE</b>	
<b>AWARD (To be completed by Government)</b>										
<b>21. ITEMS ACCEPTED:</b>										
<b>22. AMOUNT</b>		<b>23. ACCOUNTING AND APPROPRIATION DATA</b>								
<b>24. SUBMIT INVOICES TO ADDRESS SHOWN IN</b> <i>(4 copies unless otherwise specified)</i>				<b>ITEM</b>	<b>25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO</b> <input type="checkbox"/> 10 U.S.C. 2304(c) <input type="checkbox"/> 41 U.S.C. 253(c)					
<b>26. ADMINISTERED BY</b>			<b>CODE</b>		<b>27. PAYMENT WILL BE MADE BY:</b> <b>CODE</b>					
<b>CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE</b>										
<input type="checkbox"/> <b>28. NEGOTIATED AGREEMENT</b> <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"/> <b>29. AWARD</b> <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 consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.					
<b>30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN</b> <i>(Type or print)</i>					<b>31A. NAME OF CONTRACTING OFFICER</b> <i>(Type or print)</i>					
<b>30B. SIGNATURE</b>			<b>30C. DATE</b>		TEL:    EMAIL:			<b>31B. UNITED STATES OF AMERICA</b> BY		<b>31C. AWARD DATE</b>

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

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Replace Rails FFP All plant, labor, and materials to replace the rails in accordance with the attached specifications FOB: Destination PSC CD: Y1KA	1	Job		

---

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002	Mobilization and Demobilization FFP Mobilization and Demobilization FOB: Destination PSC CD: Y1KA	1	Job		

---

NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003	All Remaining Work FFP All remaining work according to the specifications. FOB: Destination PSC CD: Y1KA	1	Job		

---

NET AMT

## **SECTION 00 21 00**

### **INSTRUCTIONS TO OFFERORS (RFP)**

#### **1. SOLICITATION RESTRICTIONS**

##### **1.1. GENERAL CONTRACTOR**

This solicitation is Unrestricted and open to large and small businesses.

##### **1.2. ESTIMATED CONSTRUCTION COST**

The estimated construction cost of this project is between \$500,000 and \$1,000,000.

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

See FAR Clause 52.215-1 INSTRUCTIONS TO OFFERORS-COMPETITIVE ACQUISITION, subparagraph "(c) Submission, modification, revision, and withdrawal of proposals" 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:

Jessica Jackson, Contract Officer: [Jessica.R.Jackson@usace.army.mil](mailto:Jessica.R.Jackson@usace.army.mil)

Brianna Boehne, Contract Specialist [Brianna.Boehne@usace.army.mil](mailto:Brianna.Boehne@usace.army.mil)

Each email shall contain the following solicitation number in the subject line: **W9128F23R0014**

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/Subcontractors 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. See FAR Clause 52.236-27, Site Visit (Construction) for site visit information.

#### **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: Brianna Boehne, Contract Specialist  
[Brianna.Boehne@usace.army.mil](mailto:Brianna.Boehne@usace.army.mil) 402-995-2668 (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.

Project Name: Big Bend Intake Crane Rail Replacement  
**Bidder Inquiry Key is: TDXP2R-WWUHP**

##### **a. Registration for ProjNet Bidder Inquiry Access**

If you are already registered, go to (b) Entering Bidder Inquiries in ProjNet Bidder 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 within ProjNet 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 to replace and upgrade the intake gantry crane rails, each 729.5 feet in length, at the Big Bend Dam Powerhouse to CMAA 70 tolerances utilizing NAICS Code 238120.

Work includes removal of asphalt sealant, rails, grounding cable and anchor bolts. Install new upsized rail, complete with new grout pad, anchor bolts, grounding cables and flexible rail sealant. Work shall be in accordance with specifications 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.

## 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.

-- 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
52.215-1	Instructions to Offerors--Competitive Acquisition	NOV 2021
52.225-10 Alt I	Notice of Buy American Requirement--Construction Materials (Feb 2009) Alternate I	MAY 2014
252.204-7019	Notice of NIST SP 800-171 DoD Assessment Requirements	MAR 2022
252.215-7008	Only One Offer	JUL 2019
252.215-7013	Supplies and Services Provided by Nontraditional Defense Contractors.	JAN 2018

### CLAUSES INCORPORATED BY FULL TEXT

#### 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

**USACE Omaha – Contracting Division**

**Attn: Jessica Jackson  
1616 Capitol Avenue  
Omaha, NE 68102-4901**

(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.

**A site visit is scheduled for 29 March 2023 at 10:00 am. Contractors interested in seeing the site need to make a reservation with Trevor McDonald telephone (605) 245-1814 or by e-mail at [trevor.r.mcdonald@usace.army.mil](mailto:trevor.r.mcdonald@usace.army.mil).**

(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):

<https://acquisition.gov>

(End of provision)

#### 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 **Defense Federal Acquisition Regulation Supplement (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)

**SECTION 00 22 00**

**PROPOSAL INSTRUCTIONS, SUBMISSION REQUIREMENTS, EVALUATION,  
AND BASIS FOR AWARD**

**1. WHO MAY SUBMIT**

This solicitation is a “Best Value-Tradeoff” Unrestricted Request for Proposal for the Intake Crane Rail Replacement at Big Bend Dam, South Dakota.

The Government will evaluate proposals in accordance with the criteria herein and award a firm-fixed-price contract to the responsible offeror whose proposal conforms to all the terms and conditions of the solicitation and whose proposal is determined to represent the overall best value to the Government.

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 BIDDER INQUIRY (Section 00 21 00) 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, font no smaller than 10-point size. Schedules and charts shall be no larger than 11"x17" format.

**5. PROPOSAL SUBMITTAL INSTRUCTIONS**

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

Brianna Boehne: [Brianna.Boehne@usace.army.mil](mailto:Brianna.Boehne@usace.army.mil)

Jessica Jackson: [Jessica.R.Jackson@usace.army.mil](mailto:Jessica.R.Jackson@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 volumes listed below shall be submitted as **INDIVIDUAL** 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 all 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 (Past Performance and Project Management Plan)**

FILE NAME: W9128F23R0014\_Company Name\_Volume\_1\_Technical\_Proposal

CONTENTS:

**Table 1- Technical Proposal**

Location	Description
Vol. 1. TAB A	Factor 1 – PAST PERFORMANCE

Vol. 1. TAB B	Factor 2 – PROJECT MANAGEMENT PLAN
---------------	------------------------------------

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

FILE NAME: W9128F23R0014\_Company Name\_Volume\_2\_Price\_Proposal

CONTENTS:

**Table 2: Price Proposal Requirements**

Location	Description
Vol. 2 TAB A	Factor 3- 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 a rated in accordance with paragraph 8.4 of this section, and Factor 2 will be rated using a color and adjectival methodology with a narrative assessment. Volume 2 ( Price) will be reviewed after consensus scoring Factors 1 and 2. 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 an Offeror's proposal with appreciable merit or that will exceed specified performance or capability requirements to the considerable advantage of 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. 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 Factor 2:

Combined Technical/Risk Ratings

Color	Rating	Description
-------	--------	-------------

<b>Blue</b>	<b>Outstanding</b>	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.
<b>Purple</b>	<b>Good</b>	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.
<b>Green</b>	<b>Acceptable</b>	Proposal meets requirements and indicates an adequate approach and understanding of the requirements, and risk of unsuccessful performance is no worse than moderate.
<b>Yellow</b>	<b>Marginal</b>	Proposal has not demonstrated an adequate approach and understanding of the requirements, and/or risk of unsuccessful performance is high.
<b>Red</b>	<b>Unacceptable</b>	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.

#### 8.4 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 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."

##### 8.4.1. 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 are outlined in the Past Performance Submission Requirements section.

##### 8.4.2 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.

<b>Rating</b>	<b>Definition</b>
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.

### 8.4.3 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. Reference paragraph 10.1.2 for Past Performance submission requirements.

### 8.4.4 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.

## 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: The order of importance is noted below. All evaluation factors other than cost and price, when combined, are significantly more important than cost or price.*

**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	Equal importance to Factor 2
FACTOR 2	Vol. 1. TAB B	PROJECT MANAGEMENT PLAN	Equal importance to Factor 1

#### VOLUME 2 – PRICE AND PRO FORMA INFORMATION

Factor/Subfactor	Location	Description	Relative Importance
FACTOR 3	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 more important than Price.

Note: An “Unacceptable” evaluation rating for any factor, or combination of different factors, shall cause the proposal to be evaluated as “Unacceptable”. Factor 3 - Price will be evaluated in accordance the requirements listed in Volume 2, Factor 3 - PRICE.

### 9.1 Volume 1 - Technical Proposal

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

Factor 1 – Past Performance

Factor 2 – Project Management Plan

### 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 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 FAR Clause 52.215-1 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 work 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 impacts to the facility operations.

## 10.1. Submission Requirements

### 10.1.1 Project Narratives

The Government will evaluate how the projects submitted by the offeror demonstrate similar work experience that is relevant to this solicitation. **The Offeror shall submit two (2) projects of similar scope completed within the last 8 years (from the proposal due date). If more than two projects are submitted only the first two projects in the proposal will be evaluated.**

The offeror shall provide the following information for each of the submitted project examples:

- a. Contract number and Offeror's and/or major subcontractor's specific role in the project.
- b. Project name.
- c. Project cost.
- d. Project description must include:
  - i. Location.
  - ii. Description of work performed demonstrating Electrical & Mechanical Industrial Installation experience.
  - iii. Total contract value.
  - iv. Specific mechanical installation experience relating to the project.
  - v. Date of completion.
  - vi. Name of customer, agency, or firm.
  - vii. Point of Contact (POC) information for the customer, agency, or firm, including name, title, email, and telephone number.

Similar scope is defined as installation of gantry crane rails, overhead crane rails, or industrial crane rails and rail appurtenances, supported with a grouted bearing surface and installed to CMAA 70 tolerances utilizing laser survey equipment.

If the past performance of a subcontractor is used to meet the minimum requirements, narratives should demonstrate subcontractor past performance. A binding Letter of Commitment between the prime and subcontractor must be included 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.

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.

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

Offeror shall provide a copy of the Joint Venture agreement if offeror proposes to use a Joint Venture.

### 10.1.2 Performance Appraisals

The past performance information required in this solicitation shall be provided by the Offeror. **Offeror must provide all finalized CPARS for each project submitted or a Past Performance Questionnaire if no finalized CPARS has been completed for the submitted project. Previously completed PPQs are acceptable if no CPARS is available.**

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 Offerors 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](http://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 Questionnaires**

For any project submitted for consideration **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.

- If the offeror is unable to obtain a completed PPQ from a client for a project(s) before the closing date, the offeror shall complete and submit with the proposal the first page of the PPQ, which will provide contract and client information for the respective project(s).
- Offerors should follow up with clients/references to ensure timely submittal of questionnaires. If the client requests, questionnaires may be submitted directly to the Government's point of contact, via email at Brianna.Boehne@usace.army.mil prior to the closing date. Otherwise, the PPQs shall be submitted with the proposal. The offerors shall instruct the clients to refer to the solicitation number in the subject line.
- PPQs are source selection materials. All successfully submitted PPQs will receive an email confirmation upon receipt. If the offeror does not receive the confirmation, it is the offeror's responsibility to follow up to ensure the government has received the information.

## **10.2 Evaluation Method**

In accordance with Paragraph 8.4, the Government will evaluate the submitted Past Performance projects in the areas of recency, relevancy, and quality.

If an Offeror proposes to use a Joint Venture or a subcontractor to demonstrate construction experience, the proposal may receive more weight under this factor if it contains evidence of the Joint Venture entity working successfully together previously on relevant submitted projects. 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.

### **10.2.1 Recency**

For this solicitation, recent projects are those completed within the timeframe required in the Past Performance submission requirements.

### **10.2.2 Relevancy**

Project submissions must collectively demonstrate past performance in each of the areas of work defined in Paragraph 10.1.1. A submitted project does not need to address all areas of work to be considered, but when combined, the submitted projects should address all of the required areas of work. Project submissions that do not meet the requirement to demonstrate the past performance of all areas of work may be rated less favorably.

Higher evaluation ratings may be given for those projects that are similar to the solicitation in function, scope, complexity, dollar value, and clearly demonstrate the Offeror's capability to construct a project of this nature and execute the project successfully while containing costs and maintaining schedule.

Projects constructed for the Federal Government in a similar environment will be rated more favorably. Projects performed as the prime contractor may be given higher ratings.

Projects that do not meet the similarity criteria may be rated lower than those projects meeting the stated criteria. Omission of requested information will result in lower ratings than submissions containing all the information identified in the Paragraph 10.1.

### **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 Offeror 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.

- Projects that are more similar in size, scope, and complexity to the scope of work in this RFP shall provide for a higher confidence.
- The past performance on projects that are more similar will be considered with a higher confidence than for past performance on projects that are less similar.
- Any other aspect of the project that the evaluators could determine enhances the merit of the quote or increases the confidence in the probability of successful performance of the contract.

### **11. FACTOR 2 - PROJECT MANAGEMENT PLAN (PMP)**

#### **11.1 Submission Requirements**

The Offeror shall provide a comprehensive Project Management Plan (PMP) developed specifically for this project, *for evaluation purposes only*, to verify Offeror's experience in understanding project scope, submittal schedules, equipment procurement and delivery, offsite fabrication and/or repair, if applicable, key milestones and contract required schedule constraints.

The PMP shall include an organization chart as part of this Factor to illustrate the management approach and lines of communication. The PMP shall also include the method of management of all subcontractors, preparation, and submission of As-Built documents upon construction completion, and contract close-out. The information in the plan should make it clear that the offeror has the ability to deliver a quality product and effectively manage all subcontractors on the team, as well as the ability to coordinate all work throughout the construction phase

The PMP shall include a well thought out work plan for accomplishing the work, along with, but not limited to discussing the contractor's method and equipment to be used on the project to achieve the contract requirements, safety equipment, quality assurance program, testing, as-built drawings and how the contractor will mitigate delays. Of particular concern on this project is the approach that will be taken to ensure no debris from construction will fall into the water. Debris falling into the river could potentially stop the emergency bulkheads and intake gates from sealing. Other specific concerns are: 1) safety (one side has a dangerous fall hazard the entire length of rail), 2) weather, grout has to be placed in either summer or late fall and steps must be taken for good grout placement conditions.

The work plan shall include a comprehensive schedule, in schedule format, showing detailed steps with the project complete by the specified contract completion date. A non-binding, **arbitrary NTP date of May 1, 2023** shall be assumed with a contract duration of **549 days**.

The schedule must incorporate all work hour or operational limitations (Federal Holidays, non-work periods, normal work hours, crane operations, etc.as discussed in Section 01 12 00). In addition, during the period of June 1 – August

31 the offeror shall anticipate approximately 8 days of operational maintenance requiring use of the crane. The specific location and duration of the maintenance work will be coordinated to minimize impacts to construction

The schedule and narrative shall address sequencing, coordination timeframes and time periods of operations constraints or outages. The schedule and narrative should identify any times when Operations by maintenance staff on the deck and/or public use of the bridge may not be fully utilized due to the rail replacement and identify other features of work.

**The PMP package shall not exceed 30 pages including the schedule. Any content beyond page 30 will not be evaluated. The PMP schedule shall not include any funding or pricing data.**

## **11.2 Evaluation Method**

### **Strengths or Significant Strengths may be given for the following criteria:**

- A PMP which shows a thorough understanding of the requirements in the RFP and incorporates those requirements into the plan.
- A PMP which addresses all items requested in a thorough and comprehensive manner, and that demonstrates an effective plan for construction and close-out of the project.
- A PMP that demonstrates the Offeror's competence in executing projects that are similar to this solicitation
- A PMP that minimizes the time the Project Office is without a functioning crane.
- A PMP which minimizes impacts to operations on the deck or public bridge.
- An organizational structure that thoroughly explains and clearly delineates roles and responsibilities and flow of communications between the Contractor, subcontractor, and the Government.

### **Weaknesses or Significant Weaknesses may be given for the following criteria:**

- A PMP that does not cover all phases of work and/or demonstrates that the offeror does not understand the complexity of the project or has not considered all logistical steps in the work plan.
- A PMP that reflects an organizational structure that does not thoroughly explain or clearly identify the roles, responsibilities, hierarchies, or flows of communication both internally and with USACE.
- A proposed contract duration that is longer than the required contract duration will be viewed as a significant weakness.
- Omission of any item requested above will result in lower evaluation ratings for this tab.

In summary, the quality of the Offeror's PMP will be evaluated. A PMP that addresses all requested items in a thorough and comprehensive manner as well as demonstrates an effective plan for construction and project closeout within the project timelines may receive higher ratings. Feasible schedules that shorten the duration of operational impacts may be rated more favorably.

## **12. FACTOR 3 – PRICE**

### **12.1 Submission Requirements**

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

#### **12.1.1 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.

#### **12.1.2 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 (if applicable).

### **12.1.3 Section 00 45 00, Representations, Certifications and Other Statements of Offerors**

#### **12.1.4 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.

#### **12.1.5 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.

#### **12.1.6 Joint Venture Agreement**

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

### **12.2 Evaluation**

#### **12.2.1 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.

#### **12.2.2 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.

#### **12.2.3 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).

## **13. UTILIZATION OF SMALL BUSINESS CONCERNS**

### **13.1 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.

### **13.2 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.

### **13.3 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 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 an 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.

### **13.4 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.

### **13.5 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](http://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.

### **13.6 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 Contractors 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.”

#### **14. 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.

#### **15. CLARIFICATIONS AND DISCUSSIONS**

For definitions of the Evaluation terms referenced below, see paragraph 8.1 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. Offerors 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 8.1.6 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 8.1.7 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).

#### **16. 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.

## **17. 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 Offeror 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.



NOTE: NAVFAC/USACE REQUESTS THAT THE CLIENT COMPLETES THIS QUESTIONNAIRE AND SUBMITS DIRECTLY BACK TO THE CONTRACTOR. THE CONTRACTOR WILL SUBMIT THE COMPLETED QUESTIONNAIRE TO USACE WITH THEIR PROPOSAL, AND MAY DUPLICATE THIS QUESTIONNAIRE FOR FUTURE SUBMISSION ON USACE SOLICITATIONS. CLIENTS ARE HIGHLY ENCOURAGED TO SUBMIT QUESTIONNAIRES DIRECTLY TO THE CONTRACTOR. HOWEVER, QUESTIONNAIRES MAY BE SUBMITTED DIRECTLY TO USACE. PLEASE CONTACT THE CONTRACTOR 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.

<b>1. QUALITY:</b>						
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
<b>2. SCHEDULE/TIMELINESS OF PERFORMANCE:</b>						
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
<b>3. CUSTOMER SATISFACTION:</b>						
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
<b>4. MANAGEMENT/ PERSONNEL/LABOR</b>						
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
<b>5. COST/FINANCIAL MANAGEMENT</b>						
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				
<b>6. SAFETY/SECURITY</b>						
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
<b>7. GENERAL</b>						
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)*:

## Section 00 45 00 - Representations and Certifications

## CLAUSES INCORPORATED BY REFERENCE

52.209-7	Information Regarding Responsibility Matters	OCT 2018
52.209-13	Violation of Arms Control Treaties or Agreements -- Certification	NOV 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
252.225-7031	Secondary Arab Boycott Of Israel	JUN 2005
252.225-7050	Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism	SEP 2021

## 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 **238120, Structural Steel and Precast Concrete Contractors.**

(2) The small business size standard is **\$16,500,000.**

(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
-----	-----	-----	-----
-----	-----	-----	-----
-----	-----	-----	-----

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)

#### 52.204-24 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)

#### 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:

☐ (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
52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights	JUN 2020
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
52.211-13	Time Extensions	SEP 2000
52.215-2	Audit and Records--Negotiation	JUN 2020
52.219-8	Utilization of Small Business Concerns	OCT 2022
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
52.222-35	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
52.223-5	Pollution Prevention and Right-to-Know Information	MAY 2011
52.223-6	Drug-Free Workplace	MAY 2001
52.223-18	Encouraging Contractor Policies To Ban Text Messaging While Driving	JUN 2020
52.225-9	Buy American--Construction Materials	OCT 2022
52.225-13	Restrictions on Certain Foreign Purchases	FEB 2021
52.227-1	Authorization and Consent	JUN 2020
52.228-2	Additional Bond Security	OCT 1997
52.228-5	Insurance - Work On A Government Installation	JAN 1997
52.228-11 (Dev)	Individual Surety--Pledge of Assets (DEVIATION 2020-O0016)	FEB 2021
52.228-12	Prospective Subcontractor Requests for Bonds	MAY 2014
52.228-15 (Dev)	Performance and Payment Bonds-Construction. (Deviation 2020-O0016)	JUN 2020
52.229-3	Federal, State And Local Taxes	FEB 2013
52.232-17	Interest	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
52.233-3	Protest After Award	AUG 1996
52.233-4	Applicable Law for Breach of Contract Claim	OCT 2004
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
52.236-26	Preconstruction Conference	FEB 1995
52.242-13	Bankruptcy	JUL 1995
52.244-6	Subcontracts for Commercial Products and Commercial Services	OCT 2022
52.245-1	Government Property	SEP 2021
52.245-9	Use And Charges	APR 2012
52.246-13	Inspection--Dismantling, Demolition, or Removal of Improvements	AUG 1996
252.201-7000	Contracting Officer's Representative	DEC 1991

252.203-7000	Requirements Relating to Compensation of Former DoD Officials	SEP 2011
252.203-7001	Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies	DEC 2008
252.203-7002	Requirement to Inform Employees of Whistleblower Rights	SEP 2013
252.204-7003	Control Of Government Personnel Work Product	APR 1992
252.204-7004	Antiterrorism Awareness Training for Contractors.	FEB 2019
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting	DEC 2019
252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support	MAY 2016
252.204-7018	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services	JAN 2021
252.204-7020	NIST SP 800-171 DoD Assessment Requirements	MAR 2022
252.204-7022	Expediting Contract Closeout	MAY 2021
252.209-7004	Subcontracting With Firms That Are Owned or Controlled By The Government of a Country that is a State Sponsor of Terrorism	MAY 2019
252.211-7007	Reporting of Government-Furnished Property	MAR 2022
252.223-7008	Prohibition of Hexavalent Chromium	JUN 2013
252.225-7012	Preference For Certain Domestic Commodities	APR 2022
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
252.236-7000	Modification Proposals-Price Breakdown	DEC 1991
252.236-7002	Obstruction of Navigable Waterways	DEC 1991
252.243-7001	Pricing Of Contract Modifications	DEC 1991
252.244-7000	Subcontracts for Commercial Items	JAN 2021
252.245-7001	Tagging, Labeling, and Marking of Government-Furnished Property	APR 2012
252.245-7002	Reporting Loss of Government Property	JAN 2021
252.245-7003	Contractor Property Management System Administration	APR 2012
252.245-7004 (Dev)	Reporting, Reutilization, and Disposal (DEVIATION 2022-O0006)	NOV 2021

#### 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 **549 calendar days from Notice to Proceed**. The time stated for completion shall include final cleanup of the premises.

(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 **\$639.00** 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)

## 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (OCT 2022)

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

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

Small business concern--

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (d) of this clause.

(2) Affiliates, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

(b) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, upon occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts--

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, when the Contracting Officer explicitly requires it for an order issued under a multiple-award contract.

(d) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code(s) assigned to this contract. The small business size standard corresponding to this NAICS code(s) can be found at <https://www.sba.gov/document/support--table-size-standards>.

(e) The small business size standard for a Contractor providing an end item that it does not manufacture, process, or produce itself, for a contract other than a construction or service contract, is 500 employees if the acquisition--

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

(2) Used the HUBZone price evaluation preference regardless of dollar value, unless the Contractor waived the price evaluation preference; or

(3) Was 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.

(f) Except as provided in paragraph (h) of this clause, the Contractor shall make the representation(s) required by paragraph (b) and (c) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause, or with its offer for an order (see paragraph (c) of this clause), that the data have been validated or updated, and provide the date of the validation or update.

(g) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (f) or (h) of this clause.

(h) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

(1) The Contractor represents that it [ ] is, [ ] is not a small business concern under NAICS Code assigned to contract number .

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

(3) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it [ ] is, [ ] is not a women-owned small business concern.

(4) Women-owned small business (WOSB) joint venture eligible under the WOSB Program. The Contractor represents that it [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [The Contractor shall enter the name and unique entity identifier of each party to the joint venture: .]

(5) Economically disadvantaged women-owned small business (EDWOSB) joint venture. The Contractor represents that it [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [The Contractor shall enter the name and unique entity identifier of each party to the joint venture: .]

(6) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it [ ] is, [ ] is not a veteran-owned small business concern.

(7) [Complete only if the Contractor represented itself as a veteran-owned small business concern in paragraph (h)(6) of this clause.] The Contractor represents that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(8) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that--

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

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

[Contractor to sign and date and insert authorized signer's name and title.]

(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
<b>7.9%</b>	<b>6.9%</b>

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 **Rapid City, SD, EA-146, of which Lyman County, SD is a part.**

(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)

#### 52.232-27 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)

#### 52.236-2 DIFFERING SITE CONDITIONS (APR 1984)

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

(1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or

(2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

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

(End of clause)

#### 52.236-3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the

work or its cost, including but not limited to

- (1) conditions bearing upon transportation, disposal, handling, and storage of materials;
- (2) the availability of labor, water, electric power, and roads;
- (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

(End of clause)

#### 52.236-4 PHYSICAL DATA (APR 1984)

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

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by . . . . . [insert a description of investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels].

(b) Weather conditions . . . . . (insert a summary of weather records and warnings).

(c) Transportation facilities . . . . . (insert a summary of transportation facilities providing access from the site, including information about their availability and limitations.

(d) . . . . . (insert other pertinent information).

(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)

#### 52.242-14 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)

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):

<https://acquisition.gov>

(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 **Defense Federal Acquisition Regulation Supplement (DFARS)** (48 CFR **Chapter 2**) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of clause)

#### 252.236-7001 CONTRACT DRAWINGS AND SPECIFICATIONS (AUG 2000)

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

(b) The Contractor shall--

- (1) Check all drawings furnished immediately upon receipt;
- (2) Compare all drawings and verify the figures before laying out the work;
- (3) Promptly notify the Contracting Officer of any discrepancies;
- (4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and
- (5) Reproduce and print contract drawings and specifications as needed.

(c) In general--

- (1) Large-scale drawings shall govern small-scale drawings; and
- (2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

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

Title            File            Drawing No.  
**SEE INDEX**

(End of clause)

## 252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (DEC 2012)

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

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

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

-----  
 (Official's Name)

-----  
 (Title)

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

(1) 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.

### DB SD20230032 3/10/2023

General Decision Number: SD20230032 03/10/2023

State: South Dakota

Construction Types: Heavy and Highway





Counties: South Dakota Statewide.

HEAVY CONSTRUCTION PROJECTS

HIGHWAY 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 covered 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   into on or after January 30,   2022, or the contract is   renewed or extended (e.g., an   option is exercised) on or   after January 30, 2022:	 Executive Order 14026   generally applies to the   contract.	
	 The contractor must pay   all covered workers at   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   or between January 1, 2015 and   January 29, 2022, and the   contract is not renewed or   extended on or after January   30, 2022:	 Executive Order 13658   generally applies to the   contract.	
	 The contractor must pay all   covered workers at least   \$12.15 per hour (or the   applicable wage rate listed   on this wage determination,   if it is higher) for all   hours 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	03/10/2023

SUSD2023-001 01/11/2023

	Rates	Fringes
CARPENTER.....	\$ 31.94	0.00
CONCRETE FINISHER.....	\$ 26.45	0.00
ELECTRICIAN.....	\$ 29.78	5.04
LABORER		

Group 1.....	\$ 22.38	0.00
Group 2.....	\$ 23.16	0.00
Group 3.....	\$ 24.41	0.00
Group 5.....	\$ 31.94	0.00
Group 6.....	\$ 26.45	0.00

## LABORER CLASSIFICATIONS:

GROUP 1: Air Tool Operator; Common Laborer; Landscape Worker, Flagger, Pilot Car Driver; Trucks under 26,000 GVW; Blue-top Checker, Materials Checker.

GROUP 2: Mechanic Tender; Pipe Layer (except culvert); Form Builder Tender; Special Surface Finish Applicator; Striping.

GROUP 3: Asphalt Plant Tender; Pile Driver Leadsman; Form Setter, Oiler/Greaser.

GROUP 5: Form Builder

GROUP 6: Grade Checker

PAINTER.....	\$ 26.45	0.00
--------------	----------	------

## POWER EQUIPMENT OPERATOR:

Group 1.....	\$ 24.57	0.00
Group 2.....	\$ 24.68	0.00
Group 3.....	\$ 26.07	0.00
Group 4.....	\$ 27.18	0.00
Group 5.....	\$ 30.01	0.00

## POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Concrete Paving Cure Machine; Concrete Paving Joint Sealer; Conveyor; Tractor (farm type with attachments); Self-Propelled Broom; Concrete Routing Machine; Paver Feeder; Pugmill; Skid Steer.

GROUP 2: Bull Dozer 80 HP or less; Front End Loader 1.25 CY or less; Self-Propelled Roller (except Hot Mix); Sheepsfoot/50 Ton Pneumatic Roller; Pneumatic Tire Tractor or Crawler (includes Water Wagon and Power Spray Units); Wagon Drill; Air Trac; Truck Type Auger; Concrete Paving Saw.

GROUP 3: Asphalt Distributor; Bull Dozer over 80 HP; Concrete Paving Finishing Machine; Backhoes/Excavators 20 tons or less; Crusher (may include internal screening plant); Front End Loader over 1.25 CY; Rough Motor Grader; Self-Propelled Hot Mix Roller; Push Tractor; Euclid or Dumpster; Material Spreader; Rumble Strip Machine.

GROUP 4: Asphalt Paving Machine Screed; Asphalt Paving Machine; Cranes/Derricks/Draglines/Pile Drivers/Shovels 30 to 50 tons; Backhoes/Excavators 21 to 40 tons; Maintenance Mechanic; Scrapers; Concrete Pump Truck.

GROUP 5: Asphalt Plant; Concrete Batch Plant; Backhoes/Excavators over 40 tons;

Cranes/Derricks/Draglines/Pile Drivers/Shovels over 50 tons; Heavy Duty Mechanic; Finish Motor Grader; Automatic Fine Grader; Milling Machine; Bridge Welder.

## TRUCK DRIVER

Group 1.....	\$ 24.52	0.00
Group 2.....	\$ 25.88	4.28

## TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Tandem Truck without trailer or pup; Single Axle Truck over 26,000 GVW with trailer.

GROUP 2: Semi-Tractor and Trailer; Tandem Truck with Pup.

-----

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

=====

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.

=====

END OF GENERAL DECISION

## Section 00 73 00 - Supplementary Conditions

## INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	Destination	Government	Destination	Government
0002	Destination	Government	Destination	Government
0003	Destination	Government	Destination	Government

## DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	DODAAC / CAGE
0001	549 dys. ANP	1	COE BIG BEND PRJ OFC TECH SPT SEC TREVOR MCDONALD USAED, OMAHACENWO-OD-BB-T BIG BEND 33573 NORTH SHORE RD FORT THOMPSON SD 57339 605-245-1814 FOB: Destination	968820
0002	549 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	968820
0003	549 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	968820