

YELLOWSTONE, GRAND TETON, & SURROUNDING AREA MATOC TASK ORDER REQUEST FOR PROPOSALS

Solicitation No. 69057R23000008

Proposal Due Date:

See Page A-3, Block 13A

Project Number: WY FLAP TET TR200(1),

Project Name: Sagebrush Connector Pathway

QUICK INDEX		PROPOSAL REMINDERS
Page	Item	Electronic bids will not be accepted. Submit printed copy of bid to the address listed on the enclosed SF 1442. Before submitting your bid, please review the following:
---	Special Notice	
---	Offer Submittal Checklist	<ul style="list-style-type: none">• Have you rechecked your bid figures?• Have you completed the bid schedule?• Have you completed and signed the <i>SF 1442, Solicitation, Offer & Award</i>?• Have you acknowledged all amendments?• Have you completed the Representations & Certifications (Page B-1)?• Is your bid guarantee enclosed in proper form and amount (see FAR Clause 52.228-1), including Power of Attorney affidavit?• Does the lower left corner of the proposal envelope state "Proposal Enclosed"?• Does the lower left corner include the Solicitation Number and project no/name???
---	Authority to Sign	
---	Bid Bond	
---	Table of Contents	
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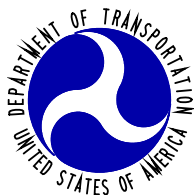
Solicitation, Offer & Award, Bid Schedule, Contract Clauses Minimum Wage Schedule, Special Contract Requirements, and Plans

This solicitation cites

Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-14

This project uses U.S. Customary units of measure

ISSUING OFFICE:



**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
610 EAST FIFTH STREET
VANCOUVER, WA 98661-3801
Phone (360) 619-7520
EMAIL: WFL.CONTRACTS@DOT.GOV**



WORLD HERITAGE SITE

PRJOECT No.	WY FLAP TET TR200(1),
PROJECT NAME:	Sagebrush Connector Pathway
BEGINNING AT	See Plans
ENDING AT	See Plans
LENGTH	0.845 Miles
NATIONAL PARK	Grand Teton National Park
COUNTY	Teton
STATE	Wyoming
FIXED COMPLETION DATE	See FAR Clause 52.211-10

SPECIAL NOTICE

WY FLAP TET TR200(1), Sagebrush Connector Pathway

Solicitation No.: 69056723R000008

THIS “TASK ORDER REQUEST FOR PROPOSAL” IS SOLELY FOR THE FOLLOWING CONTRACTS AND CONTRACTORS:

<u>Contract Number</u>	<u>Contractor Name</u>	<u>Contractor Number</u>
69056719D000006	HK Contractors, Inc.	208.523.6600
69056719D000003	Oftedal Construction, Inc.	307.232.2303
69056719D000005	MA DeAtley Construction, Inc.	509-751-1580
69056719D000004	Hat Creek Construction & Materials	530-335-5501

THIS PROJECT IS BEING ADVERTISED ON THE SAM.GOV WEBSITE TO ANNOUNCE THE UPCOMING PROJECT AND ASSIST POTENTIAL SUBCONTRACTORS BY PUBLICIZING OPPORTUNITIES. A PROPOSAL WILL **ONLY** BE ACCEPTED FROM THE ABOVE PRIME CONTRACTORS.

Additional information may be found on our web pages:

Advertised Projects:

<http://flh.fhwa.dot.gov/business/construction/#opportunities>

Description: This web page contains a link to the projects currently advertised on BETA.SAM.

Yellowstone/Grand Teton MATOC¹:

<http://flh.fhwa.dot.gov/business/construction/idiq/ygt.htm>

Description: This web page contains the contractor’s information, a description of the contract and the projects that have been awarded under the contract.

¹ A Multiple Award Task Order Contract (MATOC) is a group of contracts awarded to several contractors for upcoming work in a certain geographical area (in this case, work in Yellowstone and Grand Teton National Parks). The contracts allow the contractor to compete for upcoming highway/bridge construction projects.

Offer Submittal Checklist

Before submitting your offer, please review the following:	Done?	Is this in the envelope?
Bid Envelope		
Did I correctly address the envelope? (See page A-3, blocks 7 & 8)		
Does the lower left corner of the envelope include the Solicitation Number and the project name/number?		
Pages A-3 & A-4 (SF 1442, Solicitation Offer & Award)		
Did I include our firm name and address in block 14?		
Did I include our firm's phone number in block 15?		
Did I include our firm's remittance address in block 16? (Use when different than block 14)		
Did I include my unique entity identifier and my Cage Code?		
Did I include the number & date of <u>all</u> amendments in block 19?		
Did the appropriate official sign/date in block 20A, 20B & 20C?		
Subcontracting Plan (see page A-6a)		
Did I include the completed subcontracting plan (LARGE businesses only)		
Bid Schedule (see page A-7)		
Did I insert "Unit Bid Price" and "Amount Bid" for each bid item?		
Did the appropriate official initial corrections?		
When applicable, did I include the totals for each schedule in the summary page? (See last page of bid schedules.)		
Bid Bond (Standard Form 24) Bids received without a valid bid bond will be rejected.		
Did I complete my bid bond correctly?		
Did I include the original?		
Did I attach the Power of Attorney to the bid bond?		
Authority to Sign		
Did I include a completed form for <u>each</u> person signing the SF1442 and Bid Bond?		
Representations & Certifications & FAR Clause		
Did I include the completed B-pages (beginning on B-1)?		
Did I include the completed clause 1252.228-74 <i>Notification of Payment Bond Protection</i> (See page C-114)?		
System for Award Management (SAM) https://www.sam.gov/portal/public/SAM/		
Do we have up-to-date data in SAM?		
Veteran Reporting (FAR Clause 52.222-37)		
If applicable, did I ensure our firm has completed this annual report?		

NOTE: The Contractor is fully responsible to verify that all data is correct each time a bid package is submitted. Failure to properly input and/or update your data may cause the bid to be rejected.

Offer Submittal Checklist

Driving Directions to our Vancouver Washington Office:

[Directions to WFLHD](#)

INSTRUCTIONS: When the offeror/principal is a corporation, include this certification with your offer/bid.

Corporate Certificate

I, _____ (name), certify that I am the

_____ (title), of the corporation named as

the Offeror/Principal herein;

that _____ (name), who signed this

offer and/or bid bond on behalf of _____ (company name) is

_____ (title) of this corporation;

that the offer was duly signed for and on behalf of said corporation by authority and

scope of its governing body, and within the scope of its corporate powers.

_____ (signature)

Affix Corporate Seal

_____ (title)

INSTRUCTIONS: When the offeror/principal is a limited liability company, include this certification with your offer/bid.

Limited Liability Certificate

I, _____ (name), certify that I am the

_____ (title), of the limited liability company

named as the Offeror/Principal herein;

that _____ (name), who signed this

offer and/or bid bond on behalf of _____ (company name) is

_____ (title) of this company;

that the offer was duly signed for and on behalf of said company by authority and

scope of its governing body, and within the scope of its powers.

_____ (signature)

_____ (title)

Affix Company Seal
(as applicable)

INSTRUCTIONS: When the offeror/principal is a partnership, include this certification with your offer/bid.

Authority to Bind Partnership

This certifies that the names and signatures of all partners are listed below, and that the person signing the proposal has the authority to actually bind the partnership pursuant to its partnership agreement. Each of the partners individually has full authority to enter into and execute contractual instruments on behalf of said partnership, except as follows:

(State "None" or describe limitations, if any)

This authority shall remain in full force and effect until such time as the revocation of authority by any cause whatsoever has been furnished in writing to and acknowledge by the Contracting Officer.

(Include names and signatures of all partners)

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INSTRUCTIONS: When the offeror/principal is a joint venture, include this certification with your offer/bid.

Authority to Bind Joint Venture

This certifies that the person signing the proposal has the authority to actually bind the joint venture pursuant to its joint venture agreement, and that each of the named persons listed below individually has full authority to enter into and execute contractual instruments on behalf of said joint venture, except as follows:

(State "None" or describe limitations, if any)

This authority shall remain in full force and effect until such time as the revocation of authority by any cause whatsoever has been furnished in writing to and acknowledge by the Contracting Officer.

(Include names and signatures of all applicable individuals)

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INSTRUCTIONS: When the offeror/principal is a sole proprietorship, the signature on the offer/bid and on the bonds must be as follows:

Sole Proprietorship Requirement

An Offeror/Principal that is a sole proprietorship must submit an offer/bid and a bond signed by the sole proprietor, or by one duly authorized to sign for the sole proprietor. If the signature is by someone other than the sole proprietor, a copy of the power of attorney authorizing the individual to sign must be provided with the offer/bid.

RESERVED

<div>BID BOND</div> <div>(See instructions on reverse)</div>	DATE BOND EXECUTED (Must not be later than bid opening date)	OMB Control Number: 9000-0045 Expiration Date: 8/31/2025
Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0045. We estimate that it will take 25 minutes to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.		
PRINCIPAL (Legal name and business address)		TYPE OF ORGANIZATION ("X" one) <div><input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION <input type="checkbox"/> OTHER (Specify)</div> <div>STATE OF INCORPORATION</div>

SURETY(IES) (Name and business address)

PENAL SUM OF BOND					BID IDENTIFICATION	
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NUMBER
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS		69056723R000003
					FOR (Construction, Supplies or Services)	

OBLIGATION:

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has submitted the bid identified above.

THEREFORE:

The above obligation is void if the Principal - (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) is waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL					
SIGNATURE(S)	1.	2.	3.	Corporate Seal	
	(Seal)	(Seal)	(Seal)		
NAME(S) & TITLE(S) (Typed)	1.	2.	3.		
INDIVIDUAL SURETY(IES)					
SIGNATURE(S)	1.	2.			
	(Seal)	(Seal)			
NAME(S) (Typed)	1.	2.			
CORPORATE SURETY(IES)					
SURETY A	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

SURETY B	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed _____dollars).
4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitations listed therein. The value put into the LIABILITY LIMIT block is the penal sum (i.e., the face value) of the bond, unless a co-surety arrangement is proposed.

(b) When multiple corporate sureties are involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identifier corresponding to each of the sureties. Moreover, when co-surety arrangements exist, the parties may allocate their respective limitations of liability under the bond, provided that the sum total of their liability equals 100% of the bond penal sum.

(c) When individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.
5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
6. Type the name and title of each person signing this bond in the space provided.
7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

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01/06//23-FP14

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SPECIAL CONTRACT REQUIREMENTS (SCR)

The following Special Contract Requirements amend and supplement the *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects (FP-14)*, U.S. Department of Transportation, Federal Highway Administration.

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NOTICE TO OFFEROR

01/06/23-FP14

THIS PROJECT IS BEING SOLICITED AND AWARDED UNDER FP-14.

The FP-14 is FLH's *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects*. To view the FP-14 electronically go to:

<https://highways.dot.gov/federal-lands/specs>.

The FP-14 is a dual unit document with U.S. Customary units being the primary unit shown. Metric equivalents are shown in parenthesis.

When submitting bids, drawings, calculations, and other construction documents, use only U.S. Customary units of measure, unless otherwise stated.

I. Project Location

General Location. The project work is located 7 miles north of Jackson, Wyoming in Teton County. Approximate Global Positioning System (GPS) coordinates for the beginning of the project are N = 1448883.67 and E = 2451838.15.

Project Limits. Signs have not been erected to identify the project limits. No Government personnel will be available for show-me tours.

II. Pre- proposal Information.

GENERAL AND TECHNICAL QUESTIONS REGARDING PROPOSED WORK FOR THIS PROJECT WILL BE ACCEPTED UNTIL CLOSE-OF-BUSINESS ON 04/21/2023.

Refer to page A-5 for information on how to submit questions related to General Information and Technical Information. Answers to General and Technical Questions will be posted at <https://sam.gov/opp/120e41a52fdc4d378797297e382c5b5b/view>

Every attempt to respond to questions will be made. However, response to questions received after the above posted date is not guaranteed.

MATOC. This solicitation is solicited under the Yellowstone, Grand Teton, & Surrounding Area MATOC Multiple Award Task Order Contract (MATOC). Selection of the successful offer is based on price.

Electronic Plan Sheets. This solicitation includes electronic plan sheets available at <https://sam.gov/opp/120e41a52fdc4d378797297e382c5b5b/view>.

Physical Data. Physical data applicable to this project is listed in FAR Clause 52.236-4 *Physical Data*.

Representations & Certifications. Submit or update Representations and Certifications online at <https://www.sam.gov/SAM/> before bid submittal. For more details go to FAR Provision 52.204-8 *Annual Representations and Certifications* (see page B-2.). If you have previously registered on-line and the NAICS code for this solicitation is different than the code listed in your online file, please note the amended changes on the lines provided in FAR 52.204-8.

Requests for Information. Requests for technical information (Plan and Division 100 – 700 Specification questions only) about this project will only be accepted in writing (see Block 9 on page A-5).

SF 1442, Solicitation, Offer, and Award. Particular attention should be paid to Standard Form 1442, Solicitation, Offer and Award, to assure that Blocks 14, 15, 16, 19, 20A, and 20C are completed correctly. Sign Block 20B according to the instructions in Subsection 102.02. You must submit a completed ‘Authority to Sign’ document. You must also complete the representations and certifications contained in the Contract Provisions beginning on page B-1. Failure to furnish or complete any of the above may result in your bid being considered nonresponsive and being rejected.

Facsimile and email offers, modifications, and withdrawals. Facsimile and email offers are not authorized for this solicitation. Offers may be modified or withdrawn by email, if such notice is received by the time specified for receipt of offers. The Government will not be responsible for any failure attributable to the transmission or receipt of email data. See FAR Provision 52.215-1, *Instructions to Offerors – Competitive Acquisition*. EMAIL WFL.Contracts@dot.gov. To confirm receipt, call 360.619.7520.

Surety Bond Guarantee Program. Small businesses that need surety bonds can qualify for U.S. Small Business Administration (SBA) backed surety bonds. SBA assistance in locating a participating surety company or agent, and completing application forms is available online. For more information on the U.S. SBA’s Surety Bond Guarantee program, go online to <http://www.sba.gov/content/contractors> or call 1-800-U-ASK-SBA.

Fraud Alert. Current and potential U.S. Department of Transportation (DOT) Contractors have recently been receiving fraudulent letters purporting to be issued by DOT. These fraudulent letters request that the Contractors resubmit their banking information to DOT. If you receive such a letter, please DO NOT complete the requested worksheet that is attached to the letters and DO NOT release any information. To register or update information, Contractors are required to go directly through the System for Award Management (SAM) website and never through a third party. You can access SAM at <https://www.sam.gov/SAM/>.

COVID-19 Site Access Constraints. There may be access constraints related to the COVID-19 Pandemic. If you are intending to submit an Offer and are unable to visit the sites because of access constraints related to the COVID-19 Pandemic, please let us know.

Notice to Offeror

Project: WY FLAP TET TR200(1), Sagebrush Connector Pathway

III. Post Award Information.

Insurance. Insurance requirements are described in Subsection 107.05.

Contractor Performance Evaluations. This office posts performance evaluations in the *Contractor Performance Assessment Reporting System (CPARS)*; for additional information, see <http://www.cpars.gov/index.htm>. Upon receiving an email notice of evaluation availability, you will have 14-60 days to review the evaluation online and submit comments. If you are unable to access the system, call 360.619.7520 for assistance or for a copy of the evaluation.


IV. Specifications and Permits.

Specifications. This solicitation and subsequent contract are governed by the *Federal Acquisition Regulation (FAR)*, agency supplemental regulations, and the *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-14*. An electronic version may be found at <https://highways.dot.gov/federal-lands/specs>. A single paper copy can also be obtained from the Research & Technology Product Distribution Center (RTPDC) by e-mail to: report.center@dot.gov, or by phone 814-239-1160, or fax 814-239-2156.

Electronic Documentation. Requires all documents (including but not limited to correspondence, notifications, submittals, reports, and pay notes) to be submitted in a pdf format, or an approved fixed-layout electronic format. See Subsection 103.06.

Progress Schedules. This project includes new specifications for Prosecution and Progress and for Schedules for Construction Contracts. Carefully review Special Contract Requirements Section 108 - Prosecution and Progress, and Section 155 – Schedules for Construction Contracts.

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SOLICITATION, OFFER, AND AWARD (Construction, Alteration, or Repair)		1. SOLICITATION NO. 69056723R000008	2. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 03/30/2023	PAGE OF PAGES 1 2
IMPORTANT -- The "offer" section on the reverse must be fully completed by offeror.					
4. CONTRACT NO.		5. REQUISITION/PURCHASE REQUEST NO.		6. PROJECT NO. See Block 10	
7. ISSUED BY FEDERAL HIGHWAY ADMINISTRATION FHWA WESTERN FED LANDS DIVISION 610 E FIFTH STREET Vancouver WA 98661		CODE 690567	8. ADDRESS OFFER TO		
9. FOR INFORMATION CALL: 	a. NAME See Page A-5		b. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) 360-619-7520		

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)

This solicitation is designed WY FLAP TET TR200(1), Sagebrush Connector Pathway

IN STRICT ACCORDANCE WITH:

Federal Acquisition Regulation (FAR) and Transportation Acquisition Regulations (TAR)

General Wage Decision

Special Contract Requirements

Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-14

11. The Contractor shall begin performance _____ 10 _____ calendar days and complete it within _____ * _____ calendar days after receiving _____	
<input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. The performance period is <input checked="" type="checkbox"/> mandatory <input type="checkbox"/> negotiable. (See Page A-5.)	
12a. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES", indicate within how many calendar days after award in Item 12b.)	12b. CALENDAR DAYS 0
13. ADDITIONAL SOLICITATION REQUIREMENTS:	
a. Sealed offers in original and _____ 0 _____ copies to perform the work required are due at the place specified in Item 8 by _____ 1400 _____ (hour) local time _____ 05/01/2023 _____ (date). If this is a sealed bid solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.	
b. An offer guarantee <input checked="" type="checkbox"/> is, <input type="checkbox"/> is not required.	
c. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.	
d. Offers providing less than _____ 60 _____ calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.	

OFFER (Must be fully completed by offeror)

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)	15. TELEPHONE NO. (Include area code)
	16. REMITTANCE ADDRESS (Include only if different than item 14.)
CODE	FACILITY CODE

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

AMOUNTS

See Bid Schedule

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

19. ACKNOWLEDGEMENT OF AMENDMENTS

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

AMENDMENT NO.										
DATE.										
20a. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)					20b. SIGNATURE					20c. OFFER DATE

AWARD (To be completed by Government)

21. ITEMS ACCEPTED:

22. AMOUNT	23. ACCOUNTING AND APPROPRIATION DATA	
24. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)	ITEM See Page A-5	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()
26. ADMINISTERED BY CODE 690567 Federal Highway Administration FHWA WESTERN FED LANDS DIVISION 610 E FIFTH STREET Vancouver WA 98661	27. PAYMENT WILL BE MADE BY	

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

<input type="checkbox"/> 28. NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations,	<input type="checkbox"/> 29. AWARD (Contractor is not required to sign this document.) Your offer on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.		
30a. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)	31a. NAME OF CONTRACTING OFFICER (Type or print)		
30b. SIGNATURE	30c. DATE	31b. UNITED STATES OF AMERICA BY	31c. DATE

Block 9 **FOR GENERAL INFORMATION**, call **360.619.7520** from the hours of 8:00 a.m. to 4:00 p.m. local time or e-mail us at wfl.contracts@dot.gov.

FOR TECHNICAL INFORMATION (plan and specification questions only), requests for technical information about this project will only be accepted in writing. Submit questions via e-mail at wfl.plans-spec@dot.gov.

QUESTIONS/ANSWERS POSTED ONLINE. You can view questions and answers on the Contract Opportunities Website <https://sam.gov/>.

- Insert the solicitation number in the search box
- Scroll to the project.
- Make sure you are on the most recent view and look in the right section of the page for the most recent Q&A document.

FOR DAVIS-BACON WAGE RATE INFORMATION call the Department of Labor at **415.625.7716 (DRBA - Western Region)**

FOR PHYSICAL DATA, See FAR Contract Clause 52.236-4, Physical Data, (clauses begin on page C-1) for a listing of available data. Physical Data will be posted with the solicitation on the Sam.gov website.

Block 11 **COMPLETION DATE:** Work shall be completed on or before the date specified in FAR Clause 52.211-10, *Commencement, Prosecution, and Completion of Work*, subject to such extensions as may be authorized by the terms of the contract and the specifications made a part thereof. Contract Clauses begin on pages C-1.

Block 12A **PERFORMANCE & PAYMENT BONDS:** See FAR Clause, 52.228-15, *Performance and Payment Bonds - Construction* (clauses begin on page C-1) and Subsection 102.06 of the *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-14, U.S. Customary Units*.

Block 13B **BID BOND AMOUNT:** See FAR Clause 52.228-1, Bid Guarantee (clauses begin on page C-1).

ADDITIONAL INFORMATION: See Subsections 102.03 and 102.04 of *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-14, U.S. Customary Units*.

Block 24 **SUBMITTING INVOICES:** See Subsection 109.08 of the *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects FP-14, U.S. Customary Units*.

ESTIMATED PRICE RANGE. The price range of the project work is between **\$1,000,000** and **\$5,000,000**.

SUBCONTRACTING PLAN. This Request for Proposals requires an offeror who is a LARGE business to submit an acceptable subcontracting plan with their proposal. A large business is one whose average gross annual receipts over the past 3 years equal \$45 million or more. For your information the subcontracting plan form is included beginning on page A-6a. This requirement does not apply to SMALL businesses.

ATTACHMENT 1 – FHWA SUBCONTRACTING PLAN

1. INSTRUCTIONS:

- Where subcontracting opportunities will not exist for the solicitation, the bidder/offeror shall submit a response outlining the rationale for making this determination with its proposal/bid. The statement shall be signed by an official authorized to make decisions on behalf of the firm.
- The following information shall be provided in the bidder/offeror subcontracting plan submission and shall be expressed in terms of goal percentages of the total planned subcontracting dollars.
- Text lines may be added to this template as needed.

SUBCONTRACTING GOALS – BASE YEAR		
Total prime contract amount – Base Year:	\$	
Total planned subcontracted amount (regardless of firm/entity size status) – Base Year:	\$	
Total planned subcontracts to “other than small business” concerns (i.e., large, non-profit, university, etc.)	\$	%
Total planned subcontracts to Small Business concerns:	\$	%
• Total planned subcontracts to Veteran Owned Small Business concerns (VOSB) ¹ :	\$	%
○ Total planned subcontracts to Service-Disabled Veteran Owned Small Business (SDVOSB) concerns:	\$	%
• Total planned subcontracts to Historically Underutilized Business Zones (HUBZones):	\$	%
• Total planned subcontracts to Small Disadvantaged Business (SDB) concerns (includes 8(a), Alaska Native Corporations (ANC), and Indian Tribes):	\$	%
• Total planned subcontract awards to Women-Owned Small Business concerns (WOSB) ² concerns:	\$	%

**insert and complete additional tables if the contract includes option year(s).*

¹ SDVOSB is a subcategory of VOSB. Any dollar amount applied to SDVOSB also applies to VOSB.

² In this document, the term WOSB includes Economically Disadvantaged WOSB (EDWOSB) concerns.

1.1 Rationale if establishing a goal lower than 3% for VOSB:

1.2 Rationale if establishing a goal lower than 3% for SDVOSB:

1.3 Rationale if establishing a goal lower than 3% for HUBZone:

1.4 Rationale if establishing a goal lower than 5% for SDB:

1.5 Rationale if establishing a goal lower than 5% for WOSB:

1.6 Rationale if establishing a goal lower than the current [DOT subcontracting goal](#):

2. The following principal types of supplies and/or services are planned to be subcontracted under this contract. **[Add additional rows if more space is needed.]**

Type of Supply/Service to be Subcontracted	Company/Firm Name	Subcontracted Amount	Subcontractor Size Standard (Other Than SB, SB, VOSB, SDVOSB, HUBZone, SDB, WOSB) ³

³ List all applicable size standards for each proposed subcontractor.

3. The following methods were used to develop the subcontract percentage goals:

--

4. The following methods were used to identify potential subcontract sources for solicitation purposes. (i.e. source lists used and organizations contacted to identify potential SB concerns, such as the System for Award Management (www.SAM.gov), Dynamic Small Business Search (www.DSBS.sba.gov), trade associations, industry conferences/fairs, etc.)

--

5. **[Select appropriate option.]** Indirect costs [**were/were not**] included in establishing the subcontracting goals specified in the table above.

6. If indirect costs were included, the following method was used to determine the proportionate share of indirect costs to be incurred with SB, VOSB, SDVOSB, HUBZone, SDB and WOSB subcontractors:

--

7. The following individual will administer the subcontracting program:

Name:	
Title:	
Address:	
Telephone:	
E-mail:	

This individual's specific duties, as they relate to the subcontracting program, are as follows:

--

8. The following efforts will be taken to ensure that SB, SDB, VOSB, SDVOSB, HUBZone, and WOSB subcontractors will have an equitable opportunity to compete for subcontracts:

--

☐ [initial] It is agreed that FAR Clause 52.219-8, Utilization of Small Business Concerns, will be included in all subcontracts, which offer further subcontracting opportunities. It is further agreed that all subcontractors (except small business concerns) at all tiers below the prime contractor who receive subcontracts in excess of \$700,000 (\$1.5M for construction of any public facility with further subcontracting possibilities) will be required to adopt and comply with a subcontracting plan in accordance with FAR Clause 52.219-9.

9. The following types of records will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan (i.e., establishment of source lists, guides and other data that identify SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns; a description of the offeror's efforts to locate SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns and to award subcontracts to them, etc.) and shall be maintained through completion of the contract:

10. In accordance with FAR Subpart 19.704(a)(10) through (15), the Contractor further agrees to:

[Initial each line]

- ☐ Cooperate in any studies or surveys as may be required;
- ☐ Submit periodic reports as may be required so that the Government can determine the extent of compliance by the Contractor with the subcontracting plan;
- ☐ After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts intended for use by multiple agencies;
- ☐ Submit the Individual Subcontract Report (ISR), and the Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov/> within the timeframes identified at FAR Subpart 19.704(a)(10)(iv);
- ☐ Ensure that other than small business subcontractors with subcontracting plans agree to submit eSRS documents online as required;
- ☐ Provide its prime contract number and its unique entity identifier, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs;
- ☐ Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans;

- ☐ Make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that the offeror used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal;
- ☐ Provide the contracting officer with a written explanation if the contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in FAR 19.704(a)(12) of this section. This written explanation will be submitted to the contracting officer within 30 days of contract completion;
- ☐ Will not prohibit a subcontractor from discussing with the contracting officer any material matter pertaining to payment to or utilization of a subcontractor; and
- ☐ Pay its small business subcontractors on time and in accordance with the terms and conditions of the subcontract, and notify the contracting officer if the offeror pays a reduced or an untimely payment to a small business subcontractor (see FAR [52.242-5](#)).

Submitted by:

POC Name:	
Title:	
Email Address:	
Company Name:	
DUNS/CAGE:	
Mailing Address:	

 Signature

Bidder/Offeror please note: Before preparing the bid, carefully read the Solicitation Provisions. Insert a unit bid price, in figures, for each pay item for which a quantity appears in the bid schedule. Multiply the unit price by the quantity for each pay item and show the amount bid. Should any mathematical check made by the Government show a mistake in the amount bid, the corrected unit price extension shall govern. When the word "LPSM" (Lump Sum) appears as a unit bid price, insert an amount for each lump sum pay item. When a sum based on a fixed rate appears for any pay item in the amount bid column, include the Government inserted amount bid for the item in the total bid amount. Total all of the amounts bid for each pay item and show the total bid amount.

Item No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Amount
A0020	15101-0000	MOBILIZATION				
			ALL	LPSM	\$__LPSM__	\$__
A0040	15201-0000	CONSTRUCTION SURVEY AND STAKING				
			ALL	LPSM	\$__LPSM__	\$__
A0060	15301-0000	CONTRACTOR QUALITY CONTROL				
			ALL	LPSM	\$__LPSM__	\$__
A0080	15401-0000	CONTRACTOR TESTING				
			ALL	LPSM	\$__LPSM__	\$__
A0100	15501-0000	CONSTRUCTION SCHEDULE				
			ALL	LPSM	\$__LPSM__	\$__
A0120	15705-1400	SOIL EROSION CONTROL, FIBER ROLL				
			450	LNFT	\$__	\$__
A0140	15706-1600	SOIL EROSION CONTROL, STABILIZED CONSTRUCTION EXIT (TIMBER MAT SYSTEM, GOVERNMENT FURNISHED)				
			2	EACH	\$__	\$__
A0160	15802-0000	WATERING FOR DUST CONTROL				
			ALL	LPSM	\$__LPSM__	\$__
A0180	20101-0000	CLEARING AND GRUBBING				
			3.6	ACRE	\$__	\$__
A0200	20301-0200	REMOVAL OF BOULDER				
			14	EACH	\$__	\$__
A0220	20301-0700	REMOVAL OF DELINEATOR				
			2	EACH	\$__	\$__
A0240	20301-2400	REMOVAL OF SIGN				
			3	EACH	\$__	\$__
A0260	20401-0000	ROADWAY EXCAVATION				
			350	CUYD	\$__	\$__

Bid Schedule

Schedule:A

Schedule Type:Base

Project No:WY FLAP TET TR200(1)

Project Name:Sagebrush Connector Pathway

A0280	20402-0000	SUBEXCAVATION	1,725	CUYD	\$ _____	\$ _____
A0300	20410-0000	SELECT BORROW	6,900	CUYD	\$ _____	\$ _____
A0320	21101-1000	ROADWAY OBLITERATION, METHOD 1	345	SQYD	\$ _____	\$ _____
A0340	25101-0000	PLACED RIPRAP, METHOD A (GOVERNMENT FURNISHED)	125	CUYD	\$ _____	\$ _____
A0360	25125-0000	BOULDER (BIKE RACK, GOVERNMENT FURNISHED)	3	EACH	\$ _____	\$ _____
A0380	25126-0000	REMOVE AND RESET BOULDER	10	EACH	\$ _____	\$ _____
A0400	30201-2000	ROADWAY AGGREGATE, METHOD 2	1,300	CUYD	\$ _____	\$ _____
A0420	31302-0300	AGGREGATE-TOPSOIL COURSE, 3-INCH DEPTH	3,600	SQYD	\$ _____	\$ _____
A0440	40301-0100	ASPHALT CONCRETE PAVEMENT, TYPE 1	950	TON	\$ _____	\$ _____
A0460	60201-0800	24-INCH PIPE CULVERT	50	LNFT	\$ _____	\$ _____
A0480	60210-0800	END SECTION FOR 24-INCH PIPE CULVERT	2	EACH	\$ _____	\$ _____
A0500	60220-1750	8 FEET SPAN, 3 FEET RISE PRECAST REINFORCED CONCRETE BOX CULVERT	46	LNFT	\$ _____	\$ _____
A0520	60220-3960	12 FEET SPAN, 3 FEET RISE, PRECAST REINFORCED CONCRETE BOX CULVERT	14	LNFT	\$ _____	\$ _____

Bid Schedule

Schedule:A

Schedule Type:Base

Project No:WY FLAP TET TR200(1)

Project Name:Sagebrush Connector Pathway

A0540	60902-1000	CURB AND GUTTER, CONCRETE, 12-INCH DEPTH	153	LNFT	\$ _____	\$ _____
A0560	60905-1000	GUTTER, CONCRETE	20	LNFT	\$ _____	\$ _____
A0580	61501-0500	SIDEWALK, EXPOSED AGGREGATE CONCRETE (4-INCH DEPTH)	125	SQYD	\$ _____	\$ _____
A0600	61505-1000	ACCESSIBILITY RAMP, CONCRETE	1	EACH	\$ _____	\$ _____
A0620	61509-0000	DETECTABLE WARNING PANELS	3	SQYD	\$ _____	\$ _____
A0640	62201-0250	DUMP TRUCK, 10 CUBIC YARD MINIMUM CAPACITY	20	HOUR	\$ _____	\$ _____
A0660	62201-0600	BACKHOE LOADER, 8 CUBIC FOOT MINIMUM RATED CAPACITY BUCKET, 30-INCH WIDTH	20	HOUR	\$ _____	\$ _____
A0680	62201-0850	WHEEL LOADER, 1 CUBIC YARD MINIMUM RATED CAPACITY	20	HOUR	\$ _____	\$ _____
A0700	62201-1300	BULLDOZER, 160HP MINIMUM FLYWHEEL POWER	20	HOUR	\$ _____	\$ _____
A0720	62201-3000	HYDRAULIC EXCAVATOR	20	HOUR	\$ _____	\$ _____
A0740	62201-3500	LOADER, WHEEL, SKID STEER, 40HP MINIMUM	20	HOUR	\$ _____	\$ _____
A0760	62301-0000	GENERAL LABOR	60	HOUR	\$ _____	\$ _____
A0780	62405-0350	PLACING CONSERVED TOPSOIL, 5-INCH DEPTH	3,400	SQYD	\$ _____	\$ _____

Bid Schedule

Schedule:A

Schedule Type:Base

Project No:WY FLAP TET TR200(1)

Project Name:Sagebrush Connector Pathway

A0800	63301-1000	SIGN SYSTEM, GOVERNMENT FURNISHED SIGN (TYPE 1)	5	EACH	\$ _____	\$ _____
A0820	63301-1000	SIGN SYSTEM, GOVERNMENT FURNISHED SIGN (TYPE 2)	1	EACH	\$ _____	\$ _____
A0840	63316-1000	REMOVE AND RESET SIGN	1	EACH	\$ _____	\$ _____
A0860	63318-1000	SNOW POLE HOLDER (TYPE I)	11	EACH	\$ _____	\$ _____
A0880	63318-1000	SNOW POLE HOLDER (TYPE II)	5	EACH	\$ _____	\$ _____
A0900	63401-0300	PAVEMENT MARKINGS, TYPE B, SOLID (white)	420	LNFT	\$ _____	\$ _____
A0920	63401-2100	PAVEMENT MARKINGS, TYPE K, SOLID (yellow)	1,290	LNFT	\$ _____	\$ _____
A0940	63502-1250	TEMPORARY TRAFFIC CONTROL, TUBULAR MARKER, TYPE 42-INCH	50	EACH	\$ _____	\$ _____
A0960	63503-1000	TEMPORARY TRAFFIC CONTROL, PLASTIC FENCE	480	LNFT	\$ _____	\$ _____
A0980	63504-1000	TEMPORARY TRAFFIC CONTROL, CONSTRUCTION SIGN	160	SQFT	\$ _____	\$ _____
A1000	63506-0500	TEMPORARY TRAFFIC CONTROL, FLAGGER	620	HOUR	\$ _____	\$ _____
A1020	64603-0300	FIXTURE, BENCH (GOVERNMENT FURNISHED)	1	EACH	\$ _____	\$ _____
<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div>Submitted by: _____</div> <div>Schedule Total: _____</div> </div>						

Bid Schedule

Schedule:A

Schedule Type:Base

Project No:WY FLAP TET TR200(1)

Project Name:Sagebrush Connector Pathway

Federal Acquisition Regulation Solicitation Provisions

Representations, Certifications and Other Statements of Offeror

To the extent that any of the following Provisions may be in conflict with the Provisions in the IDIQ contract, the following Provisions will control.

The Offeror Makes the Following Representations and Certifications as a Part of its Offer.

Completing FAR provision 52.204-8 Annual Representation and Certifications.

- This solicitation is issued under NAICS 237310 – Highway, Street & Bridge Construction with a small business size standard of \$45 million. If your average annual gross receipts for the past 3 years are above \$45 million you are a large business for this solicitation. If they are below \$45 million you are a small business. Please complete the certification listed in paragraph (d).
- Before submitting bids, please ensure you have completed your annual representations and certifications electronically at the System for Award Management (SAM) website: <https://www.sam.gov/SAM/>

52.204-8 Annual Representations and Certifications. (DEC 2022)

(a) (1) The North American Industry Classification System (NAICS) code for this acquisition is__ *NAICS 237310 – Highway, Street & Bridge Construction.*

(2) The small business size standard is *_\$45 million.*

(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:

(i) ☐ Paragraph (d) applies.

(ii) ☐ 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 II and III.) This provision applies to solicitations containing the clause at [52.225-3](#).

(A) If the acquisition value is less than \$50,000, the basic provision applies.

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

(C) 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 Certifications. 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 website 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	
52.219-1 Small Business Program Representation	Under this NAICS code I represent we () Are () Are Not a small business.

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.

52.204-16 Commercial and Government Entity Code Reporting (Aug 2020)

(a) *Definition.* As used in this provision –

Commercial and Government Entity (CAGE) code means–

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

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

(b) The Offeror shall provide its CAGE code with its offer with its name and location address or otherwise include it prominently in its proposal. The CAGE code must be for that name and location address. Insert the word “CAGE” before the number. The CAGE code is required prior to award.

(c) CAGE codes may be obtained via–

(1) Registration in the System for Award Management (SAM) at www.sam.gov. If the Offeror is located in the United States or its outlying areas and does not already have a CAGE code assigned, the DLA Commercial and Government Entity (CAGE) Branch will assign a CAGE code as a part of the SAM registration process. SAM registrants located outside the United States and its outlying areas shall obtain a NCAGE code prior to registration in SAM (see paragraph (c)(3) of this provision).

(2) *The DLA Contractor and Government Entity (CAGE) Branch.* If registration in SAM is not required for the subject procurement, and the Offeror does not otherwise register in SAM, an Offeror located in the United States or its outlying areas may request that a CAGE code be assigned by submitting a request at <https://cage.dla.mil>.

(3) The appropriate country codification bureau. Entities located outside the United States and its outlying areas may obtain an NCAGE code by contacting the Codification Bureau in the foreign entity's country if that country is a member of NATO or a sponsored nation. NCAGE codes may be obtained from the NSPA at <https://eportal.nspa.nato.int/AC135Public/scage/CageList.aspx> if the foreign entity's country is not a member of NATO or a sponsored nation. Points of contact for codification bureaus, as well as additional information on obtaining NCAGE codes, are available at <http://www.nato.int/structur/AC/135/main/links/contacts.htm>.

(d) Additional guidance for establishing and maintaining CAGE codes is available at <https://cage.dla.mil>.

(e) When a CAGE code is required for the immediate owner and/or the highest-level owner by Federal Acquisition Regulation (FAR) [52.204-17](#) or [52.212-3\(p\)](#), the Offeror shall obtain the respective CAGE code from that entity to supply the CAGE code to the Government.

(f) Do not delay submission of the offer pending receipt of a CAGE code.

(g) If the solicitation includes FAR clause [52.204-2](#), Security Requirements, a subcontractor requiring access to classified information under a contract shall be identified with a CAGE code on the DD Form 254. The Contractor shall require a subcontractor requiring access to classified information to provide its CAGE code with its name and location address or otherwise include it prominently in the proposal. Each location of subcontractor performance listed on the DD Form 254 is required to reflect a corresponding unique CAGE code for each listed location unless the work is being performed at a Government facility, in which case the agency location code shall be used. The CAGE code must be for that name and location address. Insert the word "CAGE" before the number. The CAGE code is required prior to award.

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 Items. 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](#).

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 or 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) *Representation.* 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.

52.209-7 Information Regarding Responsibility Matters (Oct 2018)

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

“Administrative proceeding” means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

“Federal contracts and grants with total value greater than \$10,000,000” means—

(1) The total value of all current, active contracts and grants, including all priced options; and

(2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror [] has [] does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked “has” in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the System for Award Management, which can be accessed via <https://www.sam.gov> (see [52.204-7](#)).

52.209-13 Violation of Arms Control Treaties or Agreements--Certification (NOV 2021)

(a) This provision does not apply to acquisitions at or below the simplified acquisition threshold or to acquisitions of commercial products and commercial services as defined in Federal Acquisition Regulation [2.101](#).

(b) *Certification.* [Offeror shall check either (1) or (2).]

___ (1) The Offeror certifies that—

(i) It does not engage and has not engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act ([22 U.S.C. 2593a](#)). The report is available at <https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-arms-control-verification-and-compliance/>; and

(ii) No entity owned or controlled by the Offeror has engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act ([22 U.S.C. 2593a](#)). The report is available at <https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-arms-control-verification-and-compliance/>; or

___ (2) The Offeror is providing separate information with its offer in accordance with paragraph (d)(2) of this provision.

(c) Procedures for reviewing the annual unclassified report (see paragraph (b)(1) of this provision). For clarity, references to the report in this section refer to the entirety of the annual unclassified report, including any separate reports that are incorporated by reference into the annual unclassified report.

(1) Check the table of contents of the annual unclassified report and the country section headings of the reports incorporated by reference to identify the foreign countries listed there. Determine whether the Offeror or any person owned or controlled by the Offeror may have engaged in any activity related to one or more of such foreign countries.

(2) If there may have been such activity, review all findings in the report associated with those foreign countries to determine whether or not each such foreign country was determined to be in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the

United States is a party, or to be not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. For clarity, in the annual report an explicit certification of non-compliance is equivalent to a determination of violation. However, the following statements in the annual report are not equivalent to a determination of violation:

- (i) An inability to certify compliance.
- (ii) An inability to conclude compliance.
- (iii) A statement about compliance concerns.

(3) If so, determine whether the Offeror or any person owned or controlled by the Offeror has engaged in any activity that contributed to or is a significant factor in the determination in the report that one or more of these foreign countries is in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. Review the narrative for any such findings reflecting a determination of violation or non-adherence related to those foreign countries in the report, including the finding itself, and to the extent necessary, the conduct giving rise to the compliance or adherence concerns, the analysis of compliance or adherence concerns, and efforts to resolve compliance or adherence concerns.

(4) The Offeror may submit any questions with regard to this report by email to NDAA1290Cert@state.gov. To the extent feasible, the Department of State will respond to such email inquiries within 3 business days.

(d) Do not submit an offer unless—

- (1) A certification is provided in paragraph (b)(1) of this provision and submitted with the offer; or
- (2) In accordance with paragraph (b)(2) of this provision, the Offeror provides with its offer information that the President of the United States has

- (i) Waived application under [22 U.S.C. 2593e](#)(d) or (e); or
- (ii) Determined under [22 U.S.C. 2593e](#)(g)(2) that the entity has ceased all activities for which measures were imposed under [22 U.S.C. 2593e](#)(b).

(e) *Remedies*. The certification in paragraph (b)(1) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly submitted a false certification, in addition to other remedies available to the Government, such as suspension or debarment, the Contracting Officer may terminate any contract resulting from the false certification.

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: 4.0%

Goals for Female Participation for Each Trade: 6.9%

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

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female

employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

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

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

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is _____ county, _____.

52.225-10 Notice of Buy American Requirement—Construction Materials (May 2014)

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American—Construction Materials" (Federal Acquisition Regulation (FAR) clause [52.225-9](#)).

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Statute should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American statute before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Statute, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

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

(d) Alternate offers.

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required

to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations

52.225-12 Notice of Buy American Requirement—Construction Materials under Trade Agreements (May 2014)

(a) *Definitions.* “Commercially available off-the-shelf (COTS) item,” “construction material,” “designated country construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause [52.225-11](#)).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American statute should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American statute before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American statute, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

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

(d) Alternate offers.

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

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

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

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

USE OF RECOVERED MATERIALS ON FEDERAL LANDS HIGHWAY PROJECTS

Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. 6901 *et seq.*), requires Federal, State, and local procuring agencies using appropriated Federal funds to purchase items composed of the highest percentage of recovered materials practical. Use of recovered materials is strongly encouraged on Federal Lands Highway Projects. Highway construction items covered by the Environmental Protection Agency's *Comprehensive Guidelines for Procurement of Products Containing Recovered Materials* include fly ash, ground granulated blast furnace slag, traffic barricades, traffic cones, hydraulic mulch and compost for mulch.

Use of **fly ash** and ground **granulated blast furnace slag** and construction materials containing fly ash and ground granulated blast furnace slag on Federal Lands Highway Projects:

- It is the policy of the United States Government that fly ash and ground granulated blast furnace slag and materials containing fly ash and ground granulated blast furnace slag shall have maximum practicable opportunity for incorporation into its construction projects.
- The Contractor agrees to investigate the use of fly ash and ground granulated blast furnace slag and materials containing fly ash and ground granulated blast furnace slag to the fullest extent consistent with the efficient performance of this contract. Both the contractor and the subcontractors are urged to seek out suppliers of fly ash and ground granulated blast furnace slag, cement and concrete containing fly ash and ground granulated blast furnace slag and to solicit bids for these materials.
- Names of firms that supply fly ash and ground granulated blast furnace slag and materials containing fly ash and ground granulated blast furnace slag are available from the American Coal Ash Association and the National Slag Association.

THE FOLLOWING IS NOT A SOLICITATION PROVISION

PARTNERING

A Partnership recognizes the Government and the Contractor are both responsible for and can affect the successful completion of this project. Partnering is a vehicle to ensure the partnership has structure and quality. It recognizes the strengths of each party and uses those strengths to identify and achieve shared goals. One of the primary objectives of Partnering is to facilitate the resolution of disputes in a timely, professional, and non-adversarial manner with the outcome focused on achieving those shared goals.

WFLHD supports the concepts and tenets of Partnering and as such is encouraging the Contractor and it's Subcontractors to establish a Partnering relationship on this project.

Partnering can be formal or informal.

A formal Partnering meeting can help facilitate this relationship by helping to document the parties' common purpose and goals, and ensuring alignment. The goals are mutually agreed to and address effective and efficient performance within the scope of the contract.

Solicitation Provisions

WY FLAP TET TR200(1), Sagebrush Connector Pathway

Participation in a formal Partnering meeting is voluntary. Costs of implementing and maintaining the partnership would be agreed to by both parties and shared equally. These costs would be in addition to the contract amount.

An informal Partnering meeting can help facilitate this relationship by improving communication and encouraging cooperation. The substance of an informal Partnering meeting would be determined by mutual agreement prior to or at the preconstruction conference.

Participation in an informal Partnering meeting is voluntary. Costs of implementing and maintaining the partnership would be the responsibility of the party incurring the cost.

Please indicate your desire to participate in Partnering meeting by selecting one of the options below.

- ☐ We would like to participate in a formal Partnering meeting.
- ☐ We would like to participate in an informal Partnering meeting.
- ☐ We do not want to participate in a Partnering meeting.

COMPANY CONTACT INFORMATION

Please list your company's primary contact for this solicitation.

Name: _____

Title: _____

Email: _____

Phone: _____

FAX: _____

**FEDERAL ACQUISITION REGULATION
SOLICITATION PROVISIONS**

INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

52.204-7 System for Award Management (Oct 2018)

(a) Definitions. As used in this provision—

“Electronic Funds Transfer (EFT) indicator” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see [subpart 32.11](#)) for the same entity.

“Registered in the System for Award Management (SAM)” means that—

(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](#)) into SAM;

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

“Unique entity identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b)(1) An Offeror is required to be registered in SAM when submitting an offer or quotation, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror’s name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

- (1) Company legal business name.
- (2) Tradestyle, doing business, or other name by which your entity is commonly recognized.
- (3) Company Physical Street Address, City, State, and Zip Code.
- (4) Company Mailing Address, City, State and Zip Code (if separate from physical).
- (5) Company telephone number.
- (6) Date the company was started.
- (7) Number of employees at your location.
- (8) Chief executive officer/key manager.
- (9) Line of business (industry).
- (10) Company Headquarters name and address (reporting relationship within your entity).

(d) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See <https://www.sam.gov> for information on registration.

52.204-7 System for Award Management (Oct 2018), Alternate I (Oct 2018)

(a) Definitions. As used in this provision—

“Electronic Funds Transfer (EFT) indicator” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see [subpart 32.11](#)) for the same entity.

“Registered in the System for Award Management (SAM)” means that—

(1) An Offeror is required to be registered in SAM as soon as possible. If registration is not possible when submitting an offer or quotation, the awardee shall be registered in SAM in accordance with the requirements of clause 52.204-13, System for Award Management Maintenance;

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

“Unique entity identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b)(1) An Offeror is required to be registered in SAM when submitting an offer or quotation, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror’s name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

- (1) Company legal business name.
- (2) Tradestyle, doing business, or other name by which your entity is commonly recognized.
- (3) Company Physical Street Address, City, State, and Zip Code.
- (4) Company Mailing Address, City, State and Zip Code (if separate from physical).
- (5) Company telephone number.
- (6) Date the company was started.
- (7) Number of employees at your location.
- (8) Chief executive officer/key manager.
- (9) Line of business (industry).
- (10) Company Headquarters name and address (reporting relationship within your entity).

(d) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See <https://www.sam.gov> for information on registration.

52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29 (Aug 1998)

(a) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—

GSA Federal Supply Service
Specifications Section, Suite 8100
470 East L'Enfant Plaza, SW
Washington, DC 20407
Telephone: (202) 619-8925
Facsimile: (202) 619-8978.

(b) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (a) of this provision. Additional copies will be issued for a fee.

52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions (Jun 1988)

The specifications cited in this solicitation may be obtained electronically from:

<https://flh.fhwa.dot.gov/resources/specs/fp-14/wfl/>

52.214-34 Submission of Offers in the English Language (Apr 1991)

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

52.214-35 Submission of Offers in U.S. Currency (Apr 1991)

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

52.215-1 Instructions to Offerors—Competitive Acquisition (NOV 2021)

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

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

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

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

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

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

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

Solicitation Provisions

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

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

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

- (i) The solicitation number;
- (ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);
- (iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;
- (iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and
- (v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

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

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

(ii)

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

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

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

(3) It is the only proposal received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Contract award.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) A summary of the rationale for award.

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

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

52.216-1 Type of Contract (Apr 1984)

The Government contemplates award of a **firm fixed-price task order** contract resulting from this solicitation.

52.222-5 Construction Wage Rate Requirements—Secondary Site of the Work (May 2014)

(a)(1) The offeror shall notify the Government if the offeror intends to perform work at any secondary site of the work, as defined in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, of this solicitation.

(2) If the offeror is unsure if a planned work site satisfies the criteria for a secondary site of the work, the offeror shall request a determination from the Contracting Officer.

(b)(1) If the wage determination provided by the Government for work at the primary site of the work is not applicable to the secondary site of the work, the offeror shall request a wage determination from the Contracting Officer.

(2) The due date for receipt of offers will not be extended as a result of an offeror's request for a wage determination for a secondary site of the work.

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 **Contracting Officer, Contracts Section, Federal Highway Administration, 610 East Fifth Street, Vancouver, WA 98661-3801.**

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

52.236-27 Site Visit (Construction) (Feb 1995)

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

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

There will be no government arranged site visits. The site is readily available for inspection. Prospective offerors are encouraged to make their own arrangements to inspect the site.

52.236-28 Preparation of Proposals—Construction (Oct 1997)

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

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

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

(c) If the solicitation requires submission of a proposal on all items, failure to do so may result in the proposal being rejected without further consideration. If a proposal on all items is not required, offerors should insert the words “no proposal” in the space provided for any item on which no price is submitted.

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

Federal Acquisition Regulation Contract Clauses

To the extent that any of the following Clauses may be in conflict with the Clauses in the IDIQ contract, the following Clauses will control.

52.202-1 Definitions (Jun 2020)

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless-

- (a) The solicitation, or amended solicitation, provides a different definition;
- (b) The contracting parties agree to a different definition;
- (c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning;
- (d) The word or term is defined in FAR part 31, for use in the cost principles and procedures; or
- (e) The word or term defines an acquisition-related threshold, and if the threshold is adjusted for inflation as set forth in FAR 1.109(a), then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment; see FAR 1.109(d).

52.203-3 Gratuities (Apr 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative—

(1) Offered or gave a gratuity (*e.g.*, an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled—

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This paragraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

52.203-5 Covenant Against Contingent Fees (May 2014)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) “*Bona fide agency*,” as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

“*Bona fide employee*,” as used in this clause, means a person, employed by a contractor and subject to the contractor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“*Contingent fee*,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“*Improper influence*,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

52.203-6 Restrictions on Subcontractor Sales to the Government (Jun 2020)

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

52.203-7 Anti-Kickback Procedures (Jun 2020)

(a) *Definitions.*

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

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

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

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

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

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

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

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

(b) 41 U.S.C. chapter 87, Kickbacks, prohibits any person from-

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

- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.
- (c)
 - (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
 - (2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.
 - (3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
 - (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
 - (5) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c)(5) but excepting paragraph (c)(1) of this clause, in all subcontracts under this contract that exceed the threshold specified in Federal Acquisition Regulation 3.502-3(i) on the date of subcontract award.

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (May 2014)

- (a) If the Government receives information that a contractor or a person has violated 41 U.S.C. 2102–2104, Restrictions on Obtaining and Disclosing Certain Information, the Government may—
 - (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
 - (2) Rescind the contract with respect to which—
 - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct violates 41 U.S.C. 2102 for the purpose of either—
 - (A) Exchanging the information covered by such subsections for anything of value; or
 - (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
 - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct punishable under 41 U.S.C. 2105(a).
- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (May 2014)

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of 41 U.S.C. 2102 or 2103, as implemented in section 3.104 of the Federal Acquisition Regulation.

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- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be—
- (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or “fee floor” specified in the contract;
 - (3) For cost-plus-award-fee contracts—
 - (i) The base fee established in the contract at the time of contract award;
 - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
 - (4) For fixed-price-incentive contracts, the Government may—
 - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
 - (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime contractor’s price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Statute by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Jun 2020)

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

Agency means “executive agency” as defined in Federal Acquisition Regulation (FAR) 2.101.

Covered Federal action means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

Indian tribe and “tribal organization” have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a

local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of an agency includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and *are* permitted by other Federal law.

Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

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

(b) *Prohibition.* 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contract the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions.* The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) *Agency and legislative liaison by Contractor employees.*

(i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern-

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) *Professional and technical services.*

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

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) *Disclosure.*

(1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain

Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

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

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

(g) Subcontracts.

(1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract under this contract that exceeds the threshold specified in FAR 3.808 on the date of subcontract award. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract that exceeds the threshold specified in FAR 3.808 on the date of subcontract award.

52.203-17 – Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights, (Jun 2020)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and Federal Acquisition Regulation (FAR) 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section FAR 3.908.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award.

52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)

(a) Definitions. As used in this clause—

“Internal confidentiality agreement or statement” means a confidentiality agreement or any other written statement that the contractor requires any of its employees or subcontractors to sign regarding nondisclosure of contractor information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that contractor employees or subcontractors sign at the behest of a Federal agency.

“Subcontract” means any contract as defined in [subpart 2.1](#) entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm (including a consultant) that furnishes supplies or services to or for a prime contractor or another subcontractor.

(b) The Contractor shall not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(c) The Contractor shall notify current employees and subcontractors that prohibitions and restrictions of any preexisting internal confidentiality agreements or statements covered by this clause, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of this clause, are no longer in effect.

(d) The prohibition in paragraph (b) of this clause does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(e) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, (Pub. L. 113-235), and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) use of funds appropriated (or otherwise made available) is prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts under such contracts.

52.204-1 Approval of Contract (Dec 1989)

This contract is subject to the written approval of the Western Federal Lands’ Division Engineer (or delegate) or one level above the Contracting Officer, and shall not be binding until so approved.

52.204-4 Printed or Copied Double-Sided on Post Consumer Fiber Content Paper (May 2011)

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

“*Postconsumer fiber*” (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers’ over-runs, converters’ scrap, and over-issue publications.

(b) The Contractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data to the Government.

52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Jun 2020)

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

Executive means officers, managing partners, or any other employees in management positions.

First-tier subcontract means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

Month of award means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus.*

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified.*

(6) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information

(d)

(1) Executive compensation of the prime contractor. As a part of its annual registration requirement in the System for Award Management (SAM) (Federal Acquisition Regulation (FAR) provision 52.204-7), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(2) *First-tier subcontract information.* Unless otherwise directed by the Contracting Officer, or as provided in paragraph (g) of this clause, by the end of the month following the month of award of a first-tier subcontract valued at or above the threshold specified in FAR 4.1403(a) on the date of subcontract award, the Contractor shall report the following information at <http://www.fsrc.gov> for that first-tier subcontract. (The Contractor shall follow the instructions at <http://www.fsrc.gov> to report the data.)

- (i) Unique entity identifier for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
- (ii) Name of the subcontractor.
- (iii) Amount of the subcontract award.
- (iv) Date of the subcontract award.
- (v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
- (vi) Subcontract number (the subcontract number assigned by the Contractor).
- (vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (ix) The prime contract number, and order number if applicable.
- (x) Awarding agency name and code.
- (xi) Funding agency name and code.
- (xii) Government contracting office code.
- (xiii) Treasury account symbol (TAS) as reported in FPDS.
- (xiv) The applicable North American Industry Classification System code (NAICS).
- (3) Executive compensation of the first-tier subcontractor. Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract valued at or above the threshold specified in FAR 4.1403(a) on the date of subcontract award, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at <http://www.fsrs.gov>, if-
 - (i) In the subcontractor's preceding fiscal year, the subcontractor received-
 - (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
 - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
 - (ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)
- (e) The Contractor shall not split or break down first-tier subcontract awards to a value below the threshold specified in FAR 4.1403(a), on the date of subcontract award, to avoid the reporting requirements in paragraph (d) of this clause.
- (f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.
- (g)
 - (1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.
 - (2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards for that subcontractor.
- (h) The FSRS database at <http://www.fsrs.gov> will be prepopulated with some information from SAM and the FPDS database. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM information is incorrect, the contractor is responsible for correcting this information.

Contract Clauses

WY FLAP TET TR200(1), Sagebrush Connector Pathway

52.204-13 System for Award Management Maintenance (Oct 2018)

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

“Electronic Funds Transfer (EFT) indicator” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart [32.11](#)) for the same entity.

“Registered in the System for Award Management (SAM)” means that—

(1) The Contractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](#)), into SAM;

(2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

“System for Award Management (SAM)” means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;

(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR [subpart 4.12](#); and

(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

“Unique entity identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b) If the solicitation for this contract contained the provision [52.204-7](#) with its Alternate I, and the Contractor was unable to register prior to award, the Contractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

(c) The Contractor shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Contractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in SAM after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(d)

(1)

(i) If a Contractor has legally changed its business name or “doing business as” name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart [42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to—

(A) Change the name in SAM;

(B) Comply with the requirements of subpart [42.12](#) of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support the legally changed name.

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

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

(3) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at www.sam.gov. for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate any change to the unique entity identifier to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

(e) Contractors may obtain additional information on registration and annual confirmation requirements at <https://www.sam.gov>.

52.204–14 Service Contract Reporting Requirements (Oct 2016)

(a) Definition. First-tier subcontract means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect costs.

(b) The Contractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed under this contract during the preceding Government fiscal year (October 1–September 30).

(c) The Contractor shall report the following information:

(1) Contract number and, as applicable, order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract.

(3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) Data reported by subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at www.sam.gov. (See SAM User Guide). If the Contractor fails to submit the report in a timely manner, the contracting officer will exercise appropriate contractual remedies. In addition, the Contracting Officer will make the Contractor’s failure to comply with the reporting requirements a part of the Contractor’s performance information under FAR subpart 42.15.

(e) Agencies will review Contractor reported information for reasonableness and consistency with available contract information. In the event the agency believes that revisions to the Contractor reported information are warranted, the agency will notify the Contractor no later than November 15. By November 30, the Contractor shall revise the report, or document its rationale for the agency.

(f)

(1) The Contractor shall require each first-tier subcontractor providing services under this contract, with subcontract(s) each valued at or above the thresholds set forth in 4.1703(a)(2), to provide the following detailed information to the Contractor in sufficient time to submit the report:

- (i) Subcontract number (including subcontractor name and unique entity identifier); and
- (ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

52.204-18 Commercial and Government Entity Code Maintenance (Aug 2020)

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

Commercial and Government Entity (CAGE) code means—

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

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

(b) Contractors shall ensure that the CAGE code is maintained throughout the life of the contract for each location of contract, including subcontract, performance. For contractors registered in the System for Award Management (SAM), the DLA Commercial and Government Entity (CAGE) Branch shall only modify data received from SAM in the CAGE master file if the contractor initiates those changes via update of its SAM registration. Contractors undergoing a novation or change-of-name agreement shall notify the contracting officer in accordance with [subpart 42.12](#). The contractor shall communicate any change to the CAGE code to the contracting officer within 30 days after the change, so that a modification can be issued to update the CAGE code on the contract.

(c) Contractors located in the United States or its outlying areas that are not registered in SAM shall submit written change requests to the DLA Commercial and Government Entity (CAGE) Branch. Requests for changes shall be provided at <https://cage.dla.mil>. Change requests to the CAGE master file are accepted from the entity identified by the code.

(d) Contractors located outside the United States and its outlying areas that are not registered in SAM shall contact the appropriate National Codification Bureau (points of contact available at <http://www.nato.int/structur/AC/135/main/links/contacts.htm>) or NSPA at <https://eportal.nspa.nato.int/AC135Public/scage/CageList.aspx> to request CAGE changes.

(e) Additional guidance for maintaining CAGE codes is available at <https://cage.dla.mil>.

(f) If the contract includes Federal Acquisition Regulation clause [52.204-2](#), Security Requirements, the contractor shall ensure that subcontractors maintain their CAGE code(s) throughout the life of the contract.

52.204-19 Incorporation by Reference of Representations and Certifications (Dec 2014)

The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

52.204-21 Basic Safeguarding of Covered Contractor Information Systems (NOV 2021)

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

Covered contractor information system means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

Federal contract information means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public websites) or simple transactional information, such as necessary to process payments.

Information means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information ([44 U.S.C. 3502](#)).

Safeguarding means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

- (i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).
- (ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.
- (iii) Verify and control/limit connections to and use of external information systems.
- (iv) Control information posted or processed on publicly accessible information systems.
- (v) Identify information system users, processes acting on behalf of users, or devices.
- (vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.
- (vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.
- (viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
- (ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
- (x) Monitor, control, and protect organizational communications (*i.e.*, information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
- (xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
- (xii) Identify, report, and correct information and information system flaws in a timely manner.
- (xiii) Provide protection from malicious code at appropriate locations within organizational information systems.
- (xiv) Update malicious code protection mechanisms when new releases are available.
- (xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) *Other requirements.* This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial products or commercial services, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities. (NOV 2021)

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

Covered article means any hardware, software, or service that—

- (1) Is developed or provided by a covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means—

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) *Prohibition.* Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Contractor is prohibited from—

- (1) Providing any covered article that the Government will use on or after October 1, 2018; and
- (2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) *Reporting requirement.*

(1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts including subcontracts for the acquisition of commercial products or commercial services.

52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021)

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

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (*e.g.*, connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (*e.g.*, voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(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. The Contractor is prohibited from providing to

the Government 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, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#).

(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, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#). 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.

(c) *Exceptions*. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

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

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (NOV 2021)

(a) *Definition*.

Commercially available off-the-shelf (COTS) item, as used in this clause—

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

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in Federal Acquisition Regulation (FAR) [2.101](#));

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

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

(b) The Government suspends or debar Contractors to protect the Government’s interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of the threshold specified in FAR [9.405-2\(b\)](#) on the date of subcontract award, with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed the threshold specified in FAR [9.405-2\(b\)](#) on the date of subcontract award, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR [9.404](#) for information on the System for Award Management (SAM) Exclusions). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor’s knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government’s interests when dealing with such subcontractor in view of the specific basis for the party’s debarment, suspension, or proposed debarment.

(e) *Subcontracts*. Unless this is a contract for the acquisition of commercial products or commercial services, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

(1) Exceeds the threshold specified in FAR [9.405-2\(b\)](#) on the date of subcontract award; and

(2) Is not a subcontract for commercially available off-the-shelf items.

52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018)

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management via <https://www.sam.gov>.

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consists of two segments—

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for—

- (i) Past performance reviews required by subpart [42.15](#);
- (ii) Information that was entered prior to April 15, 2011; or
- (iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite [52.209-9](#) and request removal within 7 calendar days of the posting to FAPIIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, *i.e.*, for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

52.209-10 – Prohibition on Contracting With Inverted Domestic Corporations (Nov 2015)

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

“Inverted domestic corporation means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

“Subsidiary” means an entity in which more than 50 percent of the entity is owned—

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(c) Exceptions to this prohibition are located at 9.108-2.

(d) In the event the Contractor becomes either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation during contract performance, the Contractor shall give written notice to the Contracting Officer within five business days from the date of the inversion event.

52.211-10 Commencement, Prosecution, and Completion of Work (Apr 1984) Alternate I (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 **10/10/2024** subject to such extensions as may be authorized. The time stated for completion shall include final cleanup of the premises.

The completion date is based on the assumption that the successful offeror will receive the notice to proceed by **06/12/2023**. The completion date will be extended by the number of calendar days after the above date that the contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the contractor to execute the contract and give the required performance and payment bonds within the time specified in the offer.

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: See Special Contract Requirements, Subsection 108.04.

(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.

52.211-18 Variation in Estimated Quantity (Apr 1984)

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

52.215-2 Audit and Records--Negotiation (Jun 2020)

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

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

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

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

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

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

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

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

(2)The data reported.

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

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

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

(g)The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, and—

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

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

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

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

52.215-11 Price Reduction for Defective Certified Cost or Pricing Data--Modifications (Jun 2020)

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

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

(c)Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the

amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(d)

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

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

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

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

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

(2)

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

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

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

(ii) An offset shall not be allowed if-

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

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

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

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

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

52.215-13 Subcontractor Certified Cost or Pricing Data--Modifications (Jun 2020)

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

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) [15.403-4\(a\)\(1\)](#) on the date of execution of the modification; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data in FAR [15.403-4\(a\)\(1\)](#), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed

the threshold for submission of certified cost or pricing data in FAR [15.403-4\(a\)\(1\)](#), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR [15.408](#), [Table 15-2](#) (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR [15.403-1\(b\)](#) applies. If the threshold for submission of certified cost or pricing data specified in FAR [15.403-4\(a\)\(1\)](#) is adjusted for inflation as set forth in FAR [1.109\(a\)](#), then pursuant to FAR [1.109\(d\)](#) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

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

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of certified cost or pricing data in FAR [15.403-4\(a\)\(1\)](#) on the date of agreement on price or the date of award, whichever is later.

*****If negotiated AND if requires certified cost & pricing data, INSERT; otherwise, DELETE
.....(delete these instructions)****

52.215-15 Pension Adjustments and Asset Reversions (Oct 2010)

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

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which certified cost or pricing data were submitted.

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

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

52.215-21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data- Modifications (NOV 2021)

(a) Exceptions from certified cost or pricing data.

(1) In lieu of submitting certified cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth in Federal Acquisition Regulation (FAR) 15.403-4(a)(1) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in paragraphs

(a)(1)(i) and (ii) of this clause. If the threshold for submission of certified cost or pricing data specified in

FAR 15.403-4(a)(1) is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

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

(ii) Information on modifications of contracts or subcontracts for commercial product or commercial services.

(A) If—

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

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

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

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

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

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

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

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

(1) The Contractor shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15-2 of FAR 15.408, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15-2 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor agree to a different format and change this clause to use Alternate I.

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

52.219-8 Utilization of Small Business Concerns (Oct 2022)

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

HUBZone small business concern means a small business concern that meets the requirements described in [13 CFR 126.200](#), certified by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business concern in the Dynamic Small Business Search (DSBS) and SAM.

Service-disabled veteran-owned small business concern—

(1) Means a small business concern-

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

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

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

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation and qualified as a small business under the criteria and size standards in [13 CFR part 121](#), including the size standard that corresponds to the NAICS code assigned to the contract or subcontract.

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

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

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

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

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

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

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

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

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

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

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

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services

for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c)

(1) A joint venture qualifies as a small business concern if—

(i) Each party to the joint venture qualifies as small under the size standard for the solicitation;

or

(ii) The protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under a SBA mentor-protégé program.

(2) A joint venture qualifies as—

(i) A service-disabled veteran-owned small business concern if it complies with the requirements in [13 CFR part 125](#); or

(ii) A HUBZone small business concern if it complies with the requirements in [13 CFR 126.616\(a\)](#) through [\(c\)](#).

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

(e)

(1) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

(i) The subcontractor is registered in SAM; and

(ii) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(4) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing DSBS at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm. If the subcontractor is a joint

venture, the Contractor shall confirm that at least one party to the joint venture is certified by SBA as a HUBZone small business concern. The Contractor may confirm the representation by accessing SAM.

52.219-9 Small Business Subcontracting Plan (Oct 2022)

(a) This clause does not apply to small business concerns.

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

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).

Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial products and commercial services sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

Commercial product means a product that satisfies the definition of "commercial product" in Federal Acquisition Regulation (FAR) [2.101](#).

Commercial service means a service that satisfies the definition of "commercial service" in FAR [2.101](#).

Electronic Subcontracting Reporting System (eSRS) means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C. 1601](#) *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).

Individual subcontracting plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master subcontracting plan means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.

Reduced payment means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

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

Total contract dollars means the final anticipated dollar value, including the dollar value of all options.

Untimely payment means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.

(c)

(1) The Offeror, upon request by the *Contracting Officer*, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

(2)

(i) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iv) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(d) The Offeror's subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall

include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts, including all indirect costs except as described in paragraph (g) of this clause, to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

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

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of the applicable threshold specified in FAR [19.702\(a\)](#) on the date of subcontract award, with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;
- (iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity *contracts with* individual subcontracting plans *where the contract is intended* for use by multiple agencies;
- (iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract

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awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its *unique entity identifier*, and the e-mail address of the Offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own *unique entity identifier*, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (*e.g.*, SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than the simplified acquisition threshold, as defined in FAR [2.101](#) on the date of subcontract award, indicating-

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

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

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

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

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

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

and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact-

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through-

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if-

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see [52.242-5](#)).

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing the Dynamic Small Business Search (DSBS) at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold, as defined in FAR [2.101](#) on the date of subcontract award, in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, prior to award of the subcontract the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror and if the successful subcontract offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(7) Assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided-

(1) The master subcontracting plan has been approved;

(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial products and commercial services. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial product or commercial service. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. A Contractor authorized to use a commercial subcontracting plan shall include in its subcontracting goals and in its SSR all indirect costs, with the exception of those such as the following: Employee salaries and benefits; payments for petty cash;

depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; original equipment manufacturer relationships during warranty periods (negotiated up front with the product); utilities and other services purchased from a municipality or an entity solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one subcontracting plan. When a contract modification exceeds the subcontracting plan threshold in FAR [19.702\(a\)](#), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at FAR [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Products and Commercial Services, or when the subcontractor provides a commercial product or commercial service subject to the clause at FAR [52.244-6](#), Subcontracts for Commercial Products and Commercial Services, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns;" or (2) an approved plan required by this clause, shall be a material breach of the contract and may be considered in any past performance evaluation of the Contractor.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When the Contracting Officer rejects an ISR, the Contractor shall submit a corrected report within 30 days of receiving the notice of ISR rejection.

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(ii)

(A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to [19.702 a\)\(1\)\(iii\)](#) or [19.301-2\(e\)](#), the Contractor's achievements must be reported in the ISR on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(iv) The authority to acknowledge receipt or reject the ISR resides–

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) SSR.

(i) Reports submitted under individual contract plans–

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over the applicable threshold specified in FAR [19.702\(a\)](#), and the contract contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30 for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) *Reports submitted under a commercial plan-*

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

52.219-16 Liquidated Damages---Subcontracting Plan (Sep 2021)

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

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan (see 19.705-7), established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

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

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

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

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

52.219-28 Post-Award Small Business Program Re-Representation (Oct 2022)

Note: Do not complete at time of bid/offer

(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—

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(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.*]

52.222-3 Convict Labor (June 2003)

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

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

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

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

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

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

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

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

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

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

52.222-4 Contract Work Hours and Safety Standards—Overtime Compensation (May 2018)

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37). In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.

(d) Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

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

52.222-6 Construction Wage Rate Requirements (Aug 2018)**(a) Definition.—“Site of the work”—****(1) Means—**

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

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

(A) Located in the United States; and

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

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

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

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

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

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

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

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

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

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

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

52.222-7 Withholding of Funds (May 2014)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under

this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

52.222-8 Payrolls and Basic Records (Jul 2021)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) (Construction Wage Rate Requirement statute)), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Construction Wage Rate Requirements, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at <https://www.dol.gov/agencies/whd/forms>. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.

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

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

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without

rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

52.222-9 Apprentices and Trainees (July 2005)

(a) Apprentices.

(1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees.

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

52.222-10 Compliance with Copeland Act Requirements (Feb 1988)

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

52.222-11 Subcontracts (Labor Standards) (May 2014)

(a) *Definition.* "Construction, alteration or repair," as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the “site of the work” as defined in the FAR clause at 52.222-6, Construction Wage Rate Requirements of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the “site of the work” definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the “site of the work” definition).

(b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

- (1) Construction Wage Rate Requirements;
- (2) Contract Work Hours and Safety Standards—Overtime Compensation (if the clause is included in this contract);
- (3) Apprentices and Trainees;
- (4) Payrolls and Basic Records;
- (5) Compliance with Copeland Act Requirements;
- (6) Withholding of Funds;
- (7) Subcontracts (Labor Standards);
- (8) Contract Termination—Debarment;
- (9) Disputes Concerning Labor Standards;
- (10) Compliance with Construction Wage Rate Requirements and Related Regulations; and
- (11) Certification of Eligibility.

(c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d) (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor’s signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

52.222-12 Contract Termination—Debarment (May 2014)

A breach of the contract clauses entitled Construction Wage Rate Requirements, Contract Work Hours and Safety Standards—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Construction Wage Rate Requirements and Related Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations (May 2014)

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

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52.222-14 Disputes Concerning Labor Standards (Feb 1988)

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

52.222-15 Certification of Eligibility (May 2014)

(a) By entering into this contract, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).

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

52.222-21 Prohibition of Segregated Facilities (Apr 2015)

(a) Definitions. As used in this clause-

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

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

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

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

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

52.222-26 Equal Opportunity (Sept 2016)

(a) *Definition.*

Compensation means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

Compensation information means the amount and type of compensation provided to employees or offered to applicants, including, but not limited to, the desire of the Contractor to attract and retain a particular employee for the value the employee is perceived to add to the Contractor's profit or productivity; the availability of employees with like skills in the marketplace; market research about the

worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Contractor decisions, statements and policies related to setting or altering employee compensation.

Essential job functions means the fundamental job duties of the employment position an individual holds. A job function may be considered essential if—

- (1) The access to compensation information is necessary in order to perform that function or another routinely assigned business task; or
- (2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

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

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

United States, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c) (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin

(5)(i) The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such

employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(ii) The Contractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by—

(A) Incorporation into existing employee manuals or handbooks; and

(B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(7) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(8) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(9) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(10) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(11) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(12) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

52.222-27 Affirmative Action Compliance Requirements for Construction (Apr 2015)

(a) *Definitions.* “Covered area,” as used in this clause, means the geographical area described in the solicitation for this contract.

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

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

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

“Minority,” as used in this clause, means—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

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

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

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment

and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

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

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

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

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

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

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

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

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

(1) Actively participates in the group;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52.222-36 Affirmative Action for Workers with Disabilities (Jun 2020)

(a) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of

the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be—

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor- Management Standards Web site at <http://www.dol.gov/olms/regs/compliance/EO13496.htm>; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

52.222-50 Combating Trafficking in Persons (NOV 2021)

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

Agent means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

Coercion means-

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

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

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

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) [2.101](#);

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

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Employee means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

Forced Labor means knowingly providing or obtaining the labor or services of a person-

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

Involuntary servitude includes a condition of servitude induced by means of-

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

Recruitment fees means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for-

(i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;

(ii) Advertising

(iii) Obtaining permanent or temporary labor certification, including any associated fees;

(iv) Processing applications and petitions;

(v) Acquiring visas, including any associated fees;

(vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(viii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;

(xi) Transportation and subsistence costs-

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

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- (xii) Security deposits, bonds, and insurance; and
- (xiii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is-

- (i) Paid in property or money;
- (ii) Deducted from wages;
- (iii) Paid back in wage or benefit concessions;
- (iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or
- (v) Collected by an employer or a third party, whether licensed or unlicensed, including, but

not limited to-

- (A) Agents;
- (B) Labor brokers;
- (C) Recruiters;
- (D) Staffing firms (including private employment and placement firms);
- (E) Subsidiaries/affiliates of the employer;
- (F) Any agent or employee of such entities; and
- (G) Subcontractors at all tiers.

Severe forms of trafficking in persons means-

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

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

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

(b) *Policy*. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not-

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)

(i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees or potential employees recruitment fees;

(7)

(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment-

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that-

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is-

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Contractor requirements.* The Contractor shall-

(1) Notify its employees and agents of-

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.*

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of-

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also [18 U.S.C. 1351](#), Fraud in Foreign Labor Contracting, and [52.203-13\(b\)\(3\)\(i\)\(A\)](#), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in-

- (1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
- (2) Requiring the Contractor to terminate a subcontract;
- (3) Suspension of contract payments until the Contractor has taken appropriate remedial action;
- (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
- (5) Declining to exercise available options under the contract;
- (6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
- (7) Suspension or debarment.

(f) *Mitigating and aggravating factors.* When determining remedies, the Contracting Officer may consider the following:

(1) *Mitigating factors.* The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) *Aggravating factors.* The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) *Full cooperation.*

(1) The Contractor shall, at a minimum-

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 ([22 U.S.C. chapter 78](#)), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not-

(i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Contractor from-

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) *Compliance plan.*

- (1) This paragraph (h) applies to any portion of the contract that-
 - (i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and
 - (ii) Has an estimated value that exceeds \$550,000.
- (2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate-
 - (i) To the size and complexity of the contract; and
 - (ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.
- (3) *Minimum requirements.* The compliance plan must include, at a minimum, the following:
 - (i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.
 - (ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.
 - (iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employees or potential employees and ensures that wages meet applicable host-country legal requirements or explains any variance.
 - (iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.
 - (v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.
- (4) *Posting.*
 - (i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.
 - (ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.
- (5) *Certification.* Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that-
 - (i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and
 - (ii) After having conducted due diligence, either-
 - (A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or
 - (B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.
- (i) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that-

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$550,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

52.222-54 Employment Eligibility Verification (MAY 2022)

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

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

(1) Means any item of supply that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) [2.101](#));

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

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

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

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

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

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

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

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

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

(b) *Enrollment and verification requirements.*

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

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

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

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

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

(i) *All new employees.*

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

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

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

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

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of-

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

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

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

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

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

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

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

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

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

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

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

(1) Is for—

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

(ii) Construction;

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

(3) Includes work performed in the United States.

52.222-55 Minimum Wages Under Executive Order 13658 (JAN 2022)

(a) Definitions . As used in this clause—

United States means the 50 states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*).

Worker –

(1)

(i) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 14026, and—

(A) Whose wages under such contract are governed by the Fair Labor Standards Act ([29 U.S.C. chapter 8](#)), the Service Contract Labor Standards statute ([41 U.S.C. chapter 67](#)), or the Wage Rate Requirements (Construction) statute ([40 U.S.C. chapter 31](#), subchapter IV);

(B) Other than individuals employed in a bona fide executive , administrative, or professional capacity, as those terms are defined in 29 CFR part 541; and

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under [29 U.S.C. 214\(c\)](#).

(iii) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)

(i) A worker performs *on* a contract if the worker directly performs the specific services called for by the contract ; and

(ii) A worker performs *in connection* with a contract if the worker 's work activities are necessary to the performance of a contract but are not the specific services called for by the contract .

(b) Executive Order Minimum wage rate.

(1) The Contractor shall pay to workers, while performing in the United States , and performing on, or in connection with, this contract , a minimum hourly wage rate of \$15.00 per hour beginning January 30, 2022.

(2) The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2023, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on <https://www.sam.gov> (or any successor website), and a general notice on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction)

statute, that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this contract .

(3)

(i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of an increase in the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance , but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors shall consider any subcontractor requests for such price adjustment.

(iii) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Contractor shall pay, unconditionally to each worker , all wages due free and clear without subsequent rebate or kickback . The Contractor may make deductions that reduce a worker 's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 23.230, Deductions.

(7) The Contractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(8) Nothing in this clause shall excuse the Contractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance or any applicable contract establishing a minimum wage higher than the E.O. 14026 minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(9) The Contractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(10) The Contractor shall follow the policies and procedures in 29 CFR 23.240(b) and 23.280 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

(c)

(1) This clause applies to workers as defined in paragraph (a). As provided in that definition –

(i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker ;

(ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under [29 U.S.C. 214\(c\)](#) are covered; and

(iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This clause does not apply to–

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., *i.e.* those individuals who perform duties necessary to the performance of

the contract , but who are not directly engaged in performing the specific work called for by the contract , and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under [29 U.S.C. 213\(a\)](#) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to-

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under [29 U.S.C. 214\(a\)](#) ;

(B) Students whose wages are calculated pursuant to special certificates issued under [29 U.S.C. 214\(b\)](#) ; and

(C) Those employed in a bona fide executive , administrative, or professional capacity ([29 U.S.C. 213\(a\)\(1\)](#) and 29 CFR part 541).

(d) Notice. The Contractor shall notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor shall post notice, utilizing the poster provided by the Administrator, which can be obtained at www.dol.gov/agencies/whd/government-contracts, in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor , whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) Payroll Records.

(1) The Contractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker :

- (i) Name, address, and social security number;
- (ii) The worker 's occupation(s) or classification(s);
- (iii) The rate or rates of wages paid;
- (iv) The number of daily and weekly hours worked by each worker ;
- (v) Any deductions made ; and
- (vi) Total wages paid.

(2) The Contractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor shall also make such records available upon request of the Contracting Officer .

(3) The Contractor shall make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 23.260 and this contract . Upon direction of the Administrator or upon the Contracting Officer 's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Contractor 's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) Access. The Contractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) Withholding. The Contracting Officer , upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under this or any other Federal contract with the same Contractor , sufficient to pay workers the full amount of wages required by this clause.

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(h) Disputes. Department of Labor has set forth in 29 CFR 23.510, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 23. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

(i) Antiretaliation. The Contractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) Subcontractor compliance. The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.

(k) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

52.222-62 Paid Sick Leave Under Executive Order 13706 (Jan 2022)

(a) Definitions. As used in this clause (in accordance with 29 CFR [13.2](#))-

Child, "domestic partner", and "domestic violence" have the meaning given in 29 CFR [13.2](#).

Employee –

(1)

(i) Means any person engaged in performing work on or in connection with a contract covered by Executive Order (E.O.) 13706; and

(A) Whose wages under such contract are governed by the Service Contract Labor Standards statute ([41 U.S.C. chapter 67](#)), the Wage Rate Requirements (Construction) statute ([40 U.S.C. chapter 31, subchapter IV](#)), or the Fair Labor Standards Act (29 U.S.C. chapter 8);

(B) Including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions;

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer; and

(ii) Includes any person performing work on or in connection with the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)

(i) An employee performs "on" a contract if the employee directly performs the specific services called for by the contract; and

(ii) An employee performs "in connection with" a contract if the employee's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

Individual *related by blood or affinity whose close association with the employee is the equivalent of a family relationship* has the meaning given in 29 CFR [13.2](#).

Multiemployer plan means a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer.

Paid sick leave means compensated absence from employment that is required by E.O. 13706 and 29 CFR Part 13.

Parent, "sexual assault", "spouse", and "stalking" have the meaning given in 29 CFR [13.2](#).

United States means the 50 States and the District of Columbia.

(b) Executive Order 13706.

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(1) This contract is subject to E.O. 13706 and the regulations issued by the Secretary of Labor in 29 CFR Part 13 pursuant to the E.O.

(2) If this contract is not performed wholly within the United States , this clause only applies with respect to that part of the contract that is performed within the United States .

(c) Paid sick leave . The Contractor shall -

(1) Permit each employee engaged in performing work on or in connection with this contract to earn not less than 1 hour of paid sick leave for every 30 hours worked;

(2) Allow accrual and use of paid sick leave as required by E.O. 13706 and 29 CFR Part 13;

(3) Comply with the accrual, use, and other requirements set forth in 29 CFR [13.5](#) and 13.6, which are incorporated by reference in this contract ;

(4) Provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account;

(5) Provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the paid sick leave was taken; and

(6) Be responsible for the compliance by any subcontractor with the requirements of E.O. 13706, 29 CFR Part 13, and this clause.

(d) Contractors may fulfill their obligations under E.O. 13706 and 29 CFR Part 13 jointly with other contractors through a multiemployer plan , or may fulfill their obligations through an individual fund, plan, or program (see 29 CFR 13.8).

(e) *Withholding.* The Contracting Officer will, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this or any other Federal contract with the same Contractor , so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of E.O. 13706, 29 CFR Part 13, or this clause, including-

(1) Any pay and/or benefits denied or lost by reason of the violation;

(2) Other actual monetary losses sustained as a direct result of the violation; and

(3) Liquidated damages.

(f) Payment suspension /contract termination/contractor debarment .

(1) In the event of a failure to comply with E.O. 13706, 29 CFR Part 13, or this clause, the contracting agency may , on its own action or after authorization or by direction of the Department of Labor and written notification to the Contractor take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) Any failure to comply with the requirements of this clause may be grounds for termination for default or cause.

(3) A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

(g) The paid sick leave required by E.O. 13706, 29 CFR Part 13, and this clause is in addition to the Contractor 's obligations under the Service Contract Labor Standards statute and Wage Rate Requirements (Construction) statute, and the Contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of E.O. 13706 and 29 CFR Part 13.

(h) Nothing in E.O. 13706 or 29 CFR Part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under E.O. 13706 and 29 CFR Part 13.

(i) Recordkeeping.

(1) The Contractor shall make and maintain, for no less than three (3) years from the completion of the work on the contract , records containing the following information for each employee , which the Contractor shall make available upon request for inspection , copying, and transcription by authorized representatives of the Administrator of the Wage and Hour Division of the Department of Labor:

- (i) Name, address, and social security number of each employee .
- (ii) The employee 's occupation(s) or classification(s).
- (iii) The rate or rates of wages paid (including all pay and benefits provided).
- (iv) The number of daily and weekly hours worked.
- (v) Any deductions made .
- (vi) The total wages paid (including all pay and benefits provided) each pay period.
- (vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR [13.5\(a\)\(2\)](#).
- (viii) A copy of employees' requests to use paid sick leave , if in writing , or, if not in writing , any other records reflecting such employee requests.
- (ix) Dates and amounts of paid sick leave taken by employees (unless the Contractor 's paid time off policy satisfies the requirements of E.O. 13706 and 29 CFR Part 13 as described in 29 CFR [13.5\(f\)\(5\)](#), leave shall be designated in records as paid sick leave pursuant to E.O. 13706).
- (x) A copy of any written responses to employees' requests to use paid sick leave , including explanations for any denials of such requests, as required under 29 CFR [13.5\(d\)\(3\)](#).
- (xi) Any records reflecting the certification and documentation the Contractor may require an employee to provide under 29 CFR [13.5\(e\)](#), including copies of any certification or documentation provided by an employee .
- (xii) Any other records showing any tracking of or calculations related to an employee 's accrual or use of paid sick leave .
- (xiii) The relevant contract .
- (xiv) The regular pay and benefits provided to an employee for each use of paid sick leave .
- (xv) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to 29 CFR [13.5\(b\)\(5\)](#), to relieve the Contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR [13.5\(b\)\(4\)](#).

(2)

(i) If the Contractor wishes to distinguish between an employee 's covered and noncovered work, the Contractor shall keep records or other proof reflecting such distinctions. Only if the Contractor adequately segregates the employee 's time will time spent on noncovered work be excluded from hours worked counted toward the accrual of paid sick leave . Similarly, only if the Contractor adequately segregates the employee 's time may the Contractor properly refuse an employee 's request to use paid sick leave on the ground that the employee was scheduled to perform noncovered work during the time he or she asked to use paid sick leave .

(ii) If the Contractor estimates covered hours worked by an employee who performs work in connection with contracts covered by the E.O. pursuant to 29 CFR [13.5\(a\)\(i\)](#) or (iii), the Contractor shall keep records or other proof of the verifiable information on which such estimates are reasonably based. Only if the Contractor relies on an estimate that is reasonable and based on verifiable information will an employee 's time spent in connection with noncovered work be excluded from hours worked counted toward the accrual of paid sick leave . If the Contractor estimates the amount of time an employee spends performing in connection with contracts covered by the E.O., the Contractor shall permit the employee to use his or her paid sick leave during any work time for the Contractor .

(3) In the event the Contractor is not obligated by the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, or the Fair Labor Standards Act to keep records of an employee 's hours worked, such as because the employee is exempt from the Fair Labor Standards Act's minimum wage and overtime requirements, and the Contractor chooses to use the assumption permitted by 29 CFR [13.5\(a\)\(1\)\(iii\)](#), the Contractor is excused from the requirement in paragraph (i)(1)(iv) of this clause and 29 CFR 13.25(a)(4) to keep records of the employee 's number of daily and weekly hours worked.

(4)

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(i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of E.O. 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, shall be maintained as confidential records in separate files/records from the usual personnel files.

(ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents shall also be maintained in compliance with the confidentiality requirements of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively.

(iii) The Contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(e)(1)(ii)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(5) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(6) Nothing in this contract clause limits or otherwise modifies the Contractor's recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, the Family and Medical Leave Act, E.O. 14026, their respective implementing regulations, or any other applicable law.

(j) Interference/discrimination.

(1) The Contractor shall not in any manner interfere with an employee's accrual or use of paid sick leave as required by E.O. 13706 or 29 CFR Part 13. Interference includes, but is not limited to-

- (i) Miscalculating the amount of paid sick leave an employee has accrued;
- (ii) Denying or unreasonably delaying a response to a proper request to use paid sick leave ;
- (iii) Discouraging an employee from using paid sick leave ;
- (iv) Reducing an employee's accrued paid sick leave by more than the amount of such leave used;

- (v) Transferring an employee to work on contracts not covered by the E.O. to prevent the accrual or use of paid sick leave ;

- (vi) Disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave ; or

- (vii) Making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the Contractor's operational needs.

(2) The Contractor shall not discharge or in any other manner discriminate against any employee for-

- (i) Using, or attempting to use, paid sick leave as provided for under E.O. 13706 and 29 CFR Part 13;

- (ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under E.O. 13706 and 29 CFR Part 13;

- (iii) Cooperating in any investigation or testifying in any proceeding under E.O. 13706 and 29 CFR Part 13; or

- (iv) Informing any other person about his or her rights under E.O. 13706 and 29 CFR Part 13.

(k) *Notice.* The Contractor shall notify all employees performing work on or in connection with a contract covered by the E.O. of the paid sick leave requirements of E.O. 13706, 29 CFR Part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed

prominently on any website that is maintained by the Contractor , whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

(l) *Disputes concerning labor standards.* Disputes related to the application of E.O. 13706 to this contract shall not be subject to the general disputes clause of the contract . Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Part 13. Disputes within the meaning of this contract clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency , the Department of Labor, or the employees or their representatives.

(m) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (m), in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States .

52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Sep 2013)

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

(1) The product cannot be acquired—

(i) Competitively within a time frame providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, *i.e.*, a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at <http://www.biopreferred.gov>.

(c) In the performance of this contract, the Contractor shall—

(1) Report to <http://www.sam.gov>, with a copy to the Contracting Officer, on the product types and dollar value of any USDA designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

(2) Submit this report no later than—

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance.

52.223-3 Hazardous Material Identification and Material Safety Data (Feb 2021) Alternate I (July 1995).

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

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

Material (If none, insert <i>None</i>)	Identification No.

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

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

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

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

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

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

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

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

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

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

52.223-6 Drug-Free Workplace (May 2001)

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

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

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

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

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

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

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

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

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts (Aug 2018)

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(1) Competitively within a timeframe providing for compliance with the contract performance schedule;

(2) Meeting contract performance requirements; or

(3) At a reasonable price.

(b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The list of EPA-designated items is available at <http://www.epa.gov/cpg/products.htm>.

52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Jun 2020)

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

"Driving"—

(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

Text messaging means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009.

(c) The Contractor is encouraged to-

(1) Adopt and enforce policies that ban text messaging while driving-

(i) Company-owned or rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as-

(i) Establishment of new rules and programs or reevaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

52.225-9 Buy American-Construction Materials (OCT 2022)

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

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

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

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) [2.101](#));

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

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

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

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

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

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

Domestic construction material means—

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

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

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

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

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

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

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

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

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

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

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

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

(b) Domestic preference. (1) This clause implements [41 U.S.C. chapter 83](#), Buy American, by providing a preference for domestic construction material. In accordance with [41 U.S.C. 1907](#), the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction materials, excluding COTS fasteners. (See FAR [12.505\(a\)\(2\)](#)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

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

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

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

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

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

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

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

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

Foreign and Domestic Construction Materials Price Comparison			
Construction Material Description	Unit of Measure	Quantity	Price (dollars)*
Item1:			
Foreign construction material			
Domestic construction material			
Item2:			

Foreign construction material			
Domestic construction material			
<p><i>[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)].</i> <i>[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]</i> <i>[Include other applicable supporting information.]</i></p>			

52.225-13 Restrictions on Certain Foreign Purchases (NOV 2021)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR ChapterV, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR ChapterV and/or on OFAC's website at <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>.

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

52.227-1 Authorization and Consent (Jun 2020)

(a)The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent-

(1)Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2)Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. the entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, does not affect this authorization and consent.

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Jun 2020)

(a)The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b)In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when

requested by the Contracting Officer, all evidence and information in the Contractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award.

52.227-4 Patent Indemnity—Construction Contracts (Dec 2007)

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

52.228-1 Bid Guarantee (Sept 1996)

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

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, *e.g.*, bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds—

(1) To unsuccessful bidders as soon as practicable after the opening of bids; and

(2) To the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

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

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

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

52.228-2 Additional Bond Security (Oct 1997)

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

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government;

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

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

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

52.228-11 Individual Surety - Pledges of Assets (Feb 2021)

(a)The Contractor shall obtain from each person acting as an individual surety on a performance bond or a payment bond—

(1)A pledge of assets that meets the eligibility, valuation, and security requirements described in the Federal Acquisition Regulation (FAR) [28.203-1](#); and

(2)Standard Form 28, Affidavit of Individual Surety.

(b)The Contracting Officer may release a portion of the security interest on the individual surety's assets based upon substantial performance of the Contractor's obligations under its performance bond. The security interest in support of a performance bond shall be maintained—

(1) *Contracts for the construction, alteration, or repair of any public building or public work of the Federal Government exceeding \$150,000 (40 U.S.C. 3131).* Until completion of any warranty period, or for 1 year following final payment, whichever is later.

(2) *Contracts subject to alternative payment protection (see FAR [28.102-1\(b\)\(1\)](#)).* For the full contract performance period plus 1 year.

(3) *Other contracts not subject to the requirements of paragraph (b)(1) of this clause.* Until completion of any warranty period, or for 90 days following final payment, whichever is later.

(c)A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release. The security interest on the individual surety's assets in support of a payment bond shall be maintained—

(1) *Contracts for the construction, alteration, or repair of any public building or public work of the Federal Government exceeding \$150,000 which require performance and payment bonds (40 U.S.C. 3131).* For 1 year following final payment, or until resolution of all pending claims filed against the payment bond during the 1-year period following final payment, whichever is later.

(2) *Contracts subject to alternative payment protection (see FAR [28.102-1\(b\)\(1\)](#)).* For the full contract performance period plus 1 year.

(3)Other contracts not subject to the requirements of paragraph (c)(1) of this clause. For 90 days following final payment.

(d)The Contracting Officer may allow the Contractor to substitute an individual surety, for a performance or payment bond, after contract award. The Contractor shall comply with the requirements of paragraph (a) of this clause within the timeframe established by the Contracting Officer.

52.228-12 Prospective Subcontractor Requests for Bonds (Dec 2022)

In accordance with section 806(a)(3) of Pub. L. 102–190, as amended by sections 2091 and 8105 of Pub. L. 103–355 ([10 U.S.C. 4601 note](#) prec.), upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to 40 U.S.C. chapter 31, subchapter III, Bonds, the Contractor shall promptly provide a copy of such payment bond to the requester.

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: **Federal Highway Administration, Western Federal Lands Highway Division
610 East Fifth Street
Vancouver, Washington 98661-3801**

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: **Federal Highway Administration, Western Federal Lands Highway Division**

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 **the Federal Highway Administration, Western Federal Lands** [Beneficiary Agency] the sum of United States \$ _____. This draft is drawn under Irrevocable Letter of Credit No. _____.

**Federal Highway Administration
Western Federal Lands Highway Division**

[By]

52.228-15 Performance and Payment Bonds—Construction (Jun 2020)

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

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds.* Unless the resulting contract price is valued at or below the threshold specified in Federal Acquisition Regulation 28.102-1(a) on the date of award of this contract, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

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

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

(3) *Additional bond protection.*

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

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

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

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

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

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

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

52.229-3 Federal, State, and Local Taxes (Feb 2013)

(a) As used in this clause—

“After-imposed Federal tax” means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to

pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

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

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

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

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

(b) (1) Unless otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under 26 U.S.C. 5000C may not be—

(i) Included in the contract price; nor

(ii) Reimbursed.

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

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

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

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

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

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

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 paragraph (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.

52.232-17 Interest (May 2014)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) *Final Decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if—

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment, including any demand resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on –

(1) The date on which the designated office receives payment from the Contractor;

(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract

52.232-23 Assignment of Claims (May 2014)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 6305 (hereafter referred to as “the Act”), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

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

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

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—

(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 [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.

52.232-33 Payment by Electronic Funds Transfer— System for Award Management (Oct 2018)

(a) Method of payment.

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

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

- (i) Accept payment by check or some other mutually agreeable method of payment; or
- (ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the System for Award Management (SAM). In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to SAM.

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

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

(e) *Liability for uncompleted or erroneous transfers.*

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

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

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

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

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

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

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

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

52.232-39 Unenforceability of Unauthorized Obligations (JUN 2013)

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

52.232–40 Providing Accelerated Payments to Small Business Subcontractors. (NOV 2021)

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

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

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

52.233-1 Disputes (May 2014) Alternate I (Dec 1991)

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

(b) Except as provided in 41 U.S.C. chapter 71, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) “Claim,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

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

(2) (i) The 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 or relating to the contract, and comply with any decision of the Contracting Officer.

52.233-3 Protest after Award (Aug 1996)

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

(1) Cancel the stop-work order; or

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

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

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

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

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

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

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

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

52.236-1 Performance of Work by the Contractor (Apr 1984)

(NOTE: This clause does not apply when award is made to other than the low bidder after applying the price preference for HUBZone small business concerns under FAR clause 52.219-4, in which case the percentage in clause 52.219-4 will control).

The Contractor shall perform on the site, and with its own organization, work equivalent to at least twenty five (25) percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

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 paragraph (a) of this clause 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.

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.

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: N/A.

(b) Weather conditions: N/A.

(c) Transportation facilities: N/A.

(d) Geotechnical data, design data, and environmental information consisting of the following, will be posted with the solicitation.

(1) **GM33-16 WY FLAP Sagebrush Connector Pathway Project Final Geotechnical Recs.pdf**

(2) **wya-tet-tr-200_XS_pathway 3.pdf**

(3) **wya-tet-tr200-1_XS_pathway.pdf**

(4) **wya-tet-tr200-1_XS_culverts.pdf**

(5) **wya-tet-tr200-1_control-points.xlsx**

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

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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.

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.

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.

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.

52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (Apr 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

52.236-10 Operations and Storage Areas (Apr 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (*e.g.*, storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

52.236-11 Use and Possession Prior to Completion (Apr 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

52.236-12 Cleaning Up (Apr 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

52.236-13 Accident Prevention (Nov 1991) Alternate I (Nov 1991)

- (a) The Contractor shall provide and maintain work environments and procedures which will—
- (1) Safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
 - (2) Avoid interruptions of Government operations and delays in project completion dates; and
 - (3) Control costs in the performance of this contract.

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

- (1) Provide appropriate safety barricades, signs, and signal lights;
- (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
- (3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(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.

(f) Before commencing the work, the Contractor shall—

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

52.236-15 Schedules for Construction Contracts (Apr 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

52.236-17 Layout of Work (Apr 1984)

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

52.236-21 Specifications and Drawings for Construction (Feb 1997) Alternate II (Apr 1984)

(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) of this clause.

(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. Upon completing the work under this contract, the Contractor shall furnish See SCR 104.03 sets of all shop drawings as finally approved. These drawings shall show changes and revisions made up to the time the equipment is completed and accepted.

52.236-26 Preconstruction Conference (Feb 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

52.242-5 Payments to Small Business Subcontractors (Jan 2017)

(a) Definitions. As used in this clause—

Reduced payment means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

Untimely payment means a payment that is more than 90 days past due under the terms and conditions of a subcontract, for supplies and services for which the Government has paid the prime contractor.

(b) Notice. The Contractor shall notify the Contracting Officer, in writing, not later than 14 days after—

(1) A small business subcontractor was entitled to payment under the terms and conditions of the subcontract; and

(2) The Contractor—

(i) Made a reduced or untimely payment to the small business subcontractor; or

(ii) Failed to make a payment, which is now untimely.

(c) Content of notice. The Contractor shall include the reason(s) for making the reduced or untimely payment in any notice required under paragraph (b) of this clause.

52.242-13 Bankruptcy (July 1995)

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the contracting officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of

government contract numbers and contracting offices for all government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

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.

52.243-4 Changes (June 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) of this clause.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

52.244-2 Subcontracts (Jun 2020)

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

“Approved purchasing system” means a Contractor’s purchasing system that has been reviewed and approved in accordance with part 44 of the Federal Acquisition Regulation (FAR).

“Consent to subcontract” means the Contracting Officer’s written consent for the Contractor to enter into a particular subcontract.

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

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that-

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds-

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer’s written consent before placing the following subcontracts:

(e)

(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor’s current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor’s Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting-

(A) The principal elements of the subcontract price negotiations;

- (B)The most significant considerations controlling establishment of initial or revised prices;
- (C)The reason certified cost or pricing data were or were not required;
- (D)The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;
- (E)The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
- (F)The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
- (G)A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2)The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.
- (f)Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination-
- (1)Of the acceptability of any subcontract terms or conditions;
- (2)Of the allowability of any cost under this contract; or
- (3)To relieve the Contractor of any responsibility for performing this contract.
- (g)No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- (h)The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
- (i)The Government reserves the right to review the Contractor's purchasing system as set forth in FAR subpart 44.3.
- (j)Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

52.244-6 Subcontracts for Commercial Items (Dec 2022)

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

Commercial product, commercial service and *commercially available off-the-shelf item* have the meanings contained in Federal Acquisition Regulation (FAR) [2.101](#).

Subcontract includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial products , commercial services, or non-developmental items as components of items to be supplied under this contract .

(c)

- (1) The Contractor shall insert the following clauses in subcontracts for commercial products or commercial services:

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Nov 2021) ([41 U.S.C. 3509](#)), if the subcontract exceeds the threshold specified in FAR [3.1004](#)(a) on the date of subcontract award, and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties,

all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer .

(ii) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).

(iv) [52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems (Nov 2021) , other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause [52.204-21](#).

(v) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(vi) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment . (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(vii) [52.219-8](#), Utilization of Small Business Concerns (Oct 2022) ([15 U.S.C.637](#)(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR [19.702](#)(a) on the date of subcontract award, the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(viii) [52.222-21](#), *Prohibition of Segregated Facilities* (Apr 2015).

(ix) [52.222-26](#), Equal Opportunity (Sept 2016) (E.O.11246).

(x) [52.222-35](#), Equal Opportunity for Veterans (Jun 2020) ([38 U.S.C.4212\(a\)](#));

(xi) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jun 2020)([29 U.S.C.793](#)).

(xii) [52.222-37](#), Employment Reports on Veterans (Jun 2020) ([38 U.S.C.4212](#)).

(xiii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(xiv)

(A) [52.222-50](#), Combating Trafficking in Persons (Nov 2021) ([22 U.S.C. chapter 78](#) and E.O. 13627).

(B) Alternate I (Mar 2015) of [52.222-50](#)([22 U.S.C. chapter 78](#) and E.O. 13627).

(xv) [52.222-55](#), Minimum Wages for Contractor Workers under Executive Order 14026 (Jan 2022), if flow down is required in accordance with paragraph (k) of FAR clause [52.222-55](#).

(xvi) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause [52.222-62](#).

(xvii)

(A) [52.224-3](#), Privacy Training (Jan 2017) ([5 U.S.C. 552a](#)) if flow down is required in accordance with [52.224-3](#)(f).

(B) Alternate I (Jan 2017) of [52.224-3](#), if flow down is required in accordance with [52.224-3](#)(f) and the agency specifies that only its agency -provided training is acceptable).

(xviii) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).

(xix) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (Nov 2021) , if flow down is required in accordance with paragraph (c) of FAR clause [52.232-40](#).

(xx) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) ([46 U.S.C. 55305](#) and [10 U.S.C.2631](#)), if flow down is required in accordance with paragraph (d) of FAR clause [52.247-64](#).

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

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

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021)

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 ([46 U.S.C.App.1241\(b\)](#)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are-

- (1) Acquired for a U.S. Government agency account;
- (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
- (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
- (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c)

(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both-

(i) The Contracting Officer, and

(ii) The:

Office of Cargo Preference Maritime Administration (MAR-590) 400 Seventh Street, SW
Washington DC 20590.

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to-

(1) Cargoes carried in vessels as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 ([22 U.S.C.2353](#));

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Subcontracts or purchase orders for the acquisition of commercial products or commercial services unless-

- (i) This contract is-
 - (A) A contract or agreement for ocean transportation services; or
 - (B) A construction contract; or
- (ii) The supplies being transported are-
 - (A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or
 - (B) Shipped in direct support of U.S. military-
 - (1) Contingency operations;
 - (2) Exercises; or
 - (3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:
Office of Costs and Rates Maritime Administration 400 Seventh Street, SW Washington DC 20590 Phone: (202) 366-4610.

52.248-3 Value Engineering—Construction (Oct 2020) Alternate I (Apr 1984)

- (a) *General.* The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) of this clause.
- (b) *Definitions.* "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.
"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.
"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.
"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.
"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) of this clause).
"Value engineering change proposal (VECP)" means a proposal that—
 - (1) Requires a change to this, the instant contract, to implement; and
 - (2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; *provided*, that it does not involve a change—
 - (i) In deliverable end item quantities only; or
 - (ii) To the contract type only.
- (c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in paragraphs (c)(1) through (7) of this clause. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) of this clause.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

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

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

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

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

(e) *Government action.*

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

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

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) *Sharing—*

(1) *Rates.* The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by—

- (i) 45 percent for fixed-price contracts; or
- (ii) 75 percent for cost-reimbursement contracts.

(2) *Payment.* Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to—

- (i) Accept the VECP;
- (ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and
- (iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) *Subcontracts.* The Contractor shall include an appropriate value engineering clause in any subcontract of \$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) of this clause, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and

implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; *provided*, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

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

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

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

52.249-2 Termination for Convenience of the Government (Fixed-Price) (Apr 2012) Alternate I (Sept 1996)

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

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

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to the Government—
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (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 (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (g)(1)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, 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.

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,

Contract Clauses

WY FLAP TET TR200(1), Sagebrush Connector Pathway

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.

52.253-1 Computer Generated Forms (Jan 1991)

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

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

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

TRANSPORTATION ACQUISITION REGULATIONS

CONTRACT CLAUSES

1252.211-70 Index for Specifications (Nov 2022)

If an index or table of contents is furnished in connection with specifications, such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not a part of the specification. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

1252.223-71 Accident and Fire Reporting (Nov 2022)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work which causes—

- (1) A fatality or as much as one lost workday on the part of any employee of the Contractor or subcontractor at any tier;
- (2) Damage of \$1,000 or more to Government-owned or leased property, either real or personal;
- (3) Damage of \$1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or
- (4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) of this section shall be accomplished by the following means:

- (1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Government-owned or leased property (either real or personal), the total value of which is estimated at \$100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her authorized representative and shall be confirmed in writing within 24 hours to the Contracting Officer. Such report shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.
- (2) Other accident and fire reports required by paragraph (a) of this section may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of—
 - (i) The extent of injury; and
 - (ii) The damage and cause of the accident or fire.

Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

1252.223-73 Seat Belt Use Policies and Programs (Nov 2022)

In accordance with [Executive Order 13043](#), Increasing Seat Belt Use in the United States, dated April 16, 1997, the Contractor is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information on how to implement such a program or for statistics on the potential benefits and cost-savings to your company or organization, please visit the Click it or Ticket seat belt safety section of NHTSA's website at <https://www.nhtsa.gov/campaign/click-it-or-ticket> and <https://www.nhtsa.gov/risky-driving/seat-belts>.

1252.228-74 Notification of Payment Bond Protection (Nov 2022)

- (a) The prime contract is subject to the Bonds statute (historically referred to as the Miller Act) (40 U.S.C. chapter 31, subchapter III), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Bonds statute for amounts owed for work performed and materials delivery under the prime contract.
- (b) Persons believing that they have legal remedies under the Bonds statute should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.
- (c) The surety which has provided the payment bond under the prime contract is:

(Name)

(Street Address)

(City, State, Zip Code)

(Contact Name)

(Telephone Number)

(Email Address)

- (d) Subcontract flowdown requirements. This clause shall be flowed down to all subcontractors. Prime contractors shall insert this notice clause in all first-tier subcontracts and shall require the clause to be subsequently flowed down by all first-tier subcontractors to all their subcontractors, at any tier. This notice contains information pertaining to the surety that provided the payment bond under the prime contract and is required to be inserted in its entirety to include the information set forth in paragraph (c).

Contractor Performance Evaluations (Aug 2014)

a. Interim and final evaluations of contractor performance will be prepared on this contract in accordance with FAR 42.1502 and TAM 1242.1502. The final performance evaluations will be prepared at the time of completion of work.

b. The Contractor can elect to review the evaluation and submit additional information or provide a rebuttal statement. The contractor will be permitted 60 calendar days to respond from the date of receipt of the evaluation. Contractor response is voluntary. If the contractor does not respond within 60 days, the Government will presume that the Contractor has no comment. Any disagreement between the parties regarding an evaluation will be referred to an individual at a level above the Contracting Officer, whose decision is final.

c. Copies of the evaluations, Contractor responses, and review comments, if any, will be retained as part of the contract file, and may be used to support future award decisions.

The Federal Highway Administration utilizes the Contractor Performance Assessment Reporting System (CPARS) to record and maintain past performance information. CPARS hosts a suite of web-enabled applications that are used to document contractor performance information that is required by Federal Regulations. The CPARS module assesses performance on contracts for Systems, Services, Information Technology, and Operations Support; Architect-Engineer contracts; and Construction contracts. Reference material can be accessed in CPARS.

The registration process requires the Contractor to identify an individual that will serve as a primary contact. This individual will be authorized access to the evaluation for review and comment. In addition, the Contractor is encouraged to identify a secondary contact in the event the primary contact is unavailable to process the evaluation within the required 60 day time period. After the FHWA Focal Point registers the contract in CPARS, the contractor representative will receive a system generated email notifying him/her that the contract is registered. A system generated email will also provide the Contractor with a User ID if the person does not already have a CPARS User ID.

After a performance evaluation has been prepared and is ready for comment, the Contractor representative will receive a system generated email notification that the performance evaluation is electronically available for review and comment. The Contractor representative will receive an automated email whenever an assessment is completed and can subsequently retrieve the completed assessment from CPARS.

Contractors may access evaluations in CPARS for review and comment.

"General Decision Number: WY20230043 01/06/2023

Superseded General Decision Number: WY20220043





State: Wyoming

Construction Type: Highway

Counties: Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie and Weston Counties in Wyoming.

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.
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The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/06/2023

SUWY2022-003 06/09/2022

	Rates	Fringes
CARPENTER.....	\$ 27.00	13.58
CONCRETE FINISHER.....	\$ 26.08	6.59
ELECTRICIAN		
Electrician.....	\$ 33.55	7.88
Equipment Operator		
(Electrical Work Only).....	\$ 42.54	15.30
Ground Man.....	\$ 20.00	5.39
IRONWORKER.....	\$ 46.00	0.00
LABORER		
GROUP 1.....	\$ 18.84	0.00
GROUP 2.....	\$ 20.79	4.65
GROUP 3.....	\$ 23.00	5.44
LABORER CLASSIFICATIONS		
GROUP 1: Erector & Installer (fences, guardrail & barrier);		
Flag persons (traffic control); Form Strippers; General		
Laborers; Heater Tender; Material Checker; Pick-up Truck		
Driver; Pilot Car Driver; Pre-watering, Presetting & Pre-		
irrigation (all work); Riprap Man; Tar & Asphalt Pot Tender.		
GROUP 2: Asphalt Raker and Tamper; Bin Wall Installer; Chain		
Saw Operator (clearing & grubbing); Concrete Saw (all types);		
Dump Man; Form Setter (paving); Hand Operated Vibratory		
Roller; High Scaler; Jackhammer & Pavement Breaker;		
Landscaper, Landscape Laborer; Maintainer (traffic control);		
Mortar Man on Stone Riprap; Nozzle Man (air, water, gunite &		
sandblasting); Painter (brush & spray); Pipe Setter (all pipe		

D - 3

types); Tamper Operator (pneumatic, electric, gas & similar)
GROUP 3: Drill Doctor, Form Setter and Mover, Spader, Spilling
and/or Caisson Worker; Miner (driller), Machine Man, Timber
Man; Powderman, Blaster, Tender; Wagon Drill, Air-Trac.
(diamond and other drills for blasting powder or grouting).

POWER EQUIPMENT OPERATOR

GROUP 1.....	\$ 24.41	4.39
GROUP 2.....	\$ 25.75	5.48
GROUP 3.....	\$ 29.74	8.23

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

ALL ELECTRICAL WORK IS EXCLUDED. FOR ELECTRICAL WORK, USE
EQUIPMENT OPERATOR CLASSIFICATION LISTED UNDER ELECTRICAL
CONSTRUCTION

GROUP 1: Air Compressor (all types); Backhoes & Excavators (to
5CY.); Batch Bin Weighman, Sissorman or Hopper; Broom Operator
(all types); Chip Spreader Operator; Conveyor Belt Operator;
Crusher Oiler; Form Grader Operator; Joint Machine Operator;
Longitudinal Float Operator; Oiler, Utility; Power Loader
(belt & bucket type); Pump Operator; Roller Operator, self-
propelled (Dirt); Skid Steer (all attachments); Tire Repairman
(large construction equip. tires); Tractor Operator (farm with
or w/o power attachments); Tugger (all types).

GROUP 2: Articulated Rock Truck (all capacity); Asphalt Plant
Operator; Backhoe, Excavator & Shovel (6 CY. & larger); Batch
Plant Operator; Bituminous Laydown Machine Operator; Concrete
Batch Plant Operator; Concrete Finish Machine Operator;
Concrete Spreader & Paver Operator; Concrete Multi Blade Span
Saw (Hunt process); Crusher Operator; Dozer Operator (all
sizes & power attachments); Draglines, Cranes, Piledriver &
Truck Mounted Cranes (Mfg. Rating: less than 3.5 CY., and /or
less than 50 Tons, all attachments); Drilling Machine,
Integrated (all types); Front End Loaders (1.5 to and
including 10 CY.); Hydro-type Crane (to 50 tons); Mixer
Operator, Concrete (over 1yd.); Motor Patrol Operator (all
excluding finish); Mulching Machine Operator; Oiler (crane &
shovels); Pavement Breaker, Hydro-Tamper & similar; Roller
Operators, Asphalt (steel & pneumatic); Roto-Milling Machine
(under 8 ft. wide); Scraper Equipment (all types and sizes);
Screed Operator; Trenching Machine Operator.

GROUP 3: Draglines, Cranes, Piledrivers & Truck Mounted Cranes
(Mfg. Rating: 3.5 CY. or larger and/or 50 tons & larger, all
attachments); Front End Loaders (over 10 CY.); Heavy Duty
Mechanic, Machine Doctor; Hoist Operator (two or more drums,
shafts, or raises); Mixer Operator (dual drum); Motor Patrol
Operator (finish); Roto-Milling Machine (8 ft. & larger).

TRUCK DRIVER

GROUP 1.....	\$ 24.11	4.46
GROUP 2.....	\$ 24.11	5.06

GROUP 1: ?A? Frame Truck Driver; Coring Machine (self

General Wage Decision

WY FLAP TET TR200(1), Sagebrush Connector Pathway

propelled); Dump Truck
Driver (to and including 13 CY.); Flat Rack Material Truck
Driver (to 5 tons); Fuel
Service Truck Driver; Gang Truck Driver; Gravel Spreader;
Grease man, Tireman,
Serviceman; Oil Distributor Driver (to & including 3,600
gal.); Snow Plow Driver (the
CY. rate of the truck); Transit Mix or Wet Mix Truck Driver;
Utility Winch Truck
Driver; Water Truck Driver (to & including 3,600 gal.).
GROUP 2: Dump Truck Driver (14 to 45 CY.); Flat Rack Material
Truck Driver (over
5 tons); Low Boy & Tandem Axle Float Driver; Multiple Axle
Type Truck (semi); Oil
Distributor Driver (over 3,600 gal); Truck Mechanics; Water
Truck Driver (over 3,600
gal.); Winch Trailer Truck Driver.

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave
for Federal Contractors applies to all contracts subject to the
Davis-Bacon Act for which the contract is awarded (and any
solicitation was issued) on or after January 1, 2017. If this
contract is covered by the EO, the contractor must provide
employees with 1 hour of paid sick leave for every 30 hours
they work, up to 56 hours of paid sick leave each year.
Employees must be permitted to use paid sick leave for their
own illness, injury or other health-related needs, including
preventive care; to assist a family member (or person who is
like family to the employee) who is ill, injured, or has other
health-related needs, including preventive care; or for reasons
resulting from, or to assist a family member (or person who is
like family to the employee) who is a victim of, domestic
violence, sexual assault, or stalking. Additional information
on contractor requirements and worker protections under the EO
is available at
<https://www.dol.gov/agencies/whd/government-contracts>.

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator

(See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

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

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

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

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

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END OF GENERAL DECISIO"



ATTENTION

The following Special Contract Requirements (SCRs) are only a portion of the specifications for this project. These SCRs amend and supplement the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-14. The FP-14 is a separately published book. In order to understand the solicitation properly you need to have the FP-14 as well as this packet. Pay particular attention to the provisions of Subsection 104.04 in the FP-14 that explain how each of the many contract documents fit together.

One printed copy of the FP-14 will be distributed to the successful bidder.

To view the FP-14 electronically, go to:

<https://highways.dot.gov/federal-lands/specs>

A single paper copy can also be obtained from the Research & Technology Product Distribution Center (RTPDC) by e-mail report.center@dot.gov, phone 814-239-1160, or fax 814-239-2156.

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DIVISION 100 GENERAL REQUIREMENTS
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Section 101. — TERMS, FORMAT, AND DEFINITIONS

11/08/21– FP-14

101.03 Abbreviations. Add the following to paragraph (a):

AMS-STD – Aerospace Material Specification Standard

OHWM or OHW – Ordinary High-Water Mark

SAE – Society of Automotive Engineers

101.04 Definitions. Amend as follows:

Delete the text of the following definitions and substitute the following:

Award — The written acceptance of an offeror’s proposal by the CO.

Bid — When used in a project package, carries the same meaning as Offer.

Bidder — When used in a project package, carries the same meaning as Offeror.

Bid Guarantee — A form of security assuring that the offeror will not withdraw an offer within the period specified for acceptance and will execute a written Task Order and furnish required bonds.

Bid Schedule — The prepared schedule included with the offer forms, containing the estimated quantities of pay items for which unit prices are requested.

Contract — The written agreement between the Government and the Contractor setting forth the obligations of the parties for the ordering of, performance of, and payment for, the prescribed work. Refers to both the Basic Contract and the Task Orders.

Contract Time — The specified time allowed for completion of all Task Order work.

Notice to Proceed — Written notice to the Contractor to begin the Task Order work.

Pay Item — A specific item of work for which a unit price is provided in the Task Order.

Payment Bond — The security executed by the Contractor and surety or sureties and furnished to the Government to ensure payments as required by law to all persons supplying labor or material according to the Task Order.

Performance Bond — The security executed by the Contractor and surety or sureties and furnished to the Government to guarantee completion of the Task Order work.

Project — The specific section of the highway or other property on which construction is to be performed under the Task Order.

Solicitation — The complete assembly of documents (whether attached or incorporated by reference) furnished to prospective offerors.

Surety — An individual or corporation legally liable for the debt, default, or failure of a Contractor to satisfy a Task Order obligation.

Work — The furnishing of labor, material, equipment, and other incidentals required to successfully complete the project according to the Task Order.

Add the following:

Basic Contract — The Indefinite Delivery, Indefinite Quantity (IDIQ) contract which is a written agreement between the Government and the Contractor(s) setting forth the general obligations of the parties for the ordering of, performance of, and payment for, the work to be performed under the subsequent Task Orders.

Holidays — Holidays occur on the following days:

- 1st day of January – New Years’ Day;
- 3rd Monday of January – Martin Luther King, Jr. Day;
- 3rd Monday of February – Presidents' Day;
- Last Monday of May – Memorial Day;
- 19th day of June – Juneteenth National Independence Day;
- 4th day of July – Independence Day;
- 1st Monday of September – Labor Day;
- 2nd Monday of October – Columbus Day;
- 11th day of November – Veterans’ Day;
- 4th Thursday of November – Thanksgiving Day;
- 25th day of December – Christmas Day;
- Other days declared holidays by the Congress or the President; and
- If a holiday occurs on a Saturday, the preceding Friday is also a legal holiday. If a holiday occurs on a Sunday, the Monday following is also a legal holiday.

In-Water Work — Work below the ordinary high-water mark (OHWM or OHW).

Offer — A written proposal by an offeror to perform work at a proposed price.

Special Contract Requirements

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Offeror — Any individual or legal entity submitting an offer.

Pneumatic Roller — Self-propelled compaction device with smooth pneumatic tires staggered in position to provide overlap between the front and rear tires.

Task Order — An order for a specific level of work that may or may not be related to one or more projects.

Section 102. — BID, AWARD, AND EXECUTION OF CONTRACT

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102.02 Preparation of Bids. Delete the Subsection title, text of the first paragraph, and substitute the following:

102.02 Preparation of Offers. Follow the requirements of FAR Provision 52.215-1 Instructions to Offerors Competitive Acquisition.

Selection of the successful offeror is based on lowest price. The technical factors are: Price only

102.05 Public Opening of Bids. Delete this Subsection.

102.05A Contract Award. (Added Subsection).

Follow the requirements in paragraph (f) of FAR Provision 52.215-1, Instructions to Offerors-Competitive Acquisition.

The selection of the successful offeror will be based on lowest price.

102.06 Performance and Payment Bonds. Delete the text of the first paragraph and substitute the following:

Follow the requirements of FAR Clause 52.228-15 Performance and Payment Bonds – Construction. Furnish a performance bond and a payment bond each in the penal amount of 100 percent of the original task order price.

Section 103. — SCOPE OF WORK

04/03/20– FP-14

103.01 Intent of Contract. Add the following:

Additional work on sites within or in the vicinity of the project may be requested by the CO. Such work generally will be in response to natural disasters. Provide cost proposals and perform work as ordered by the CO.

103.05 Partnering. Delete the text of this Subsection and insert the following:

To facilitate this contract, the CO offers to participate in a partnership with the Contractor. This partnership draws on the strengths of each organization to identify and achieve reciprocal goals. Partnering strives to resolve problems in a timely, professional, and non-adversarial manner. If problems result in disputes, partnering encourages, but does not require, alternative dispute resolution instead of the formal claim process. The objective is effective and efficient contract performance to achieve a quality project within budget and on schedule.

Acceptance of this partnering offer by the Contractor is optional, and the partnership is bilateral.

(a) Formal partnering. If the formal partnering offer is accepted, mutually agree with the CO on the level of organizational involvement and the need for a professional to facilitate the partnering process. Engage the facilitator and other resources for key Contractor representatives and the CO to attend a partnership development and team-building workshop usually between the time of award and the Notice to Proceed. Hold additional progress meetings upon mutual agreement.

The direct cost of formal partnering facilities, professional facilitation, copying fees, and other miscellaneous costs directly related to partnering meetings will be shared by the Contractor and Government. Secure and pay for facilities, professional fees, and miscellaneous requirements. Submit invoices to the CO. The Government will reimburse the Contractor for 50 percent of the agreed costs incurred for the formal partnering process. The Government's share will not exceed \$5,000.00.

Each party is responsible for making and paying for its own travel, lodging, and meal arrangements. No time extension for the completion of the project will be made for the use of formal partnering.

(b) Informal partnering. If the informal partnering offer is accepted, mutually agree with the CO on the timing and substance of an informal Partnering meeting.

Costs of implementing and maintaining the informal partnership are the responsibility of the party incurring the cost.

103.06 Electronic Documentation. (Added Subsection).

After award of the contract, provide all written documents in pdf format, or an approved fixed-layout electronic format.

In addition to electronic documents, provide paper copies of the following documents and as requested by the CO:

- (a) Documents required under Section 102;
- (b) Drawings required under Subsection 104.03;
- (c) Weight records required under Subsection 109.03;
- (d) Receiving records required under Subsection 109.04;
- (e) Final voucher and release of claims required under Subsection 109.09;
- (f) WFLHD 470 forms required under Section 153;
- (g) Construction schedules required under Section 155; and
- (h) Concrete batch tickets required under Subsection 552.09.

Provide documents in their native file format (the format produced by the software that the document was created in) upon request.

Provide a resolution quality where color, text, and lines are clearly discernible. Submit each document in an individual file. Name files with a unique document name that includes the document date, document description, and project number, in the following format or as requested by the CO:

MMDDYYYY_item description_project number; where: MMDDYYYY = month, day, and year.

Deliver electronic documents to the email address identified at the preconstruction conference or otherwise amended in writing by the CO. Limit the size of emailed documents to 20MB. If a document cannot be split or reduced below 20MB, then the CO will provide guidance on how to deliver the documents electronically, or a paper copy may be required. Documents delivered on removable media (compact disc, USB memory stick, etc.) will not be accepted. Documents delivered after 5:00 p.m. local time will be considered received at 7:00 a.m. on the following business day.

The CO will reject without review any documents that are unreadable or corrupted, illegible, or include malicious content.

Provide one paper copy of each document upon request, unless more paper copies are specified.

103.07 Signatures for Electronic Documentation. (Added Subsection).**(a) Definitions.**

(1) Electronic Signature. A computer data compilation of any symbol or series of symbols executed, adopted, or authorized by an individual to be the legally binding equivalent of the individual's handwritten signature.

(2) Wet Signature. A signature of ink from pen, or a scanned copy of an actual signature of ink from pen.

(b) Sign documents requiring a signature by electronic signature or by wet signature.

Unless the CO requests a wet signature, an electronic signature may be provided. Assume responsibility for the validity of electronic signatures. The Government will assume that the authorized individual's electronic signature is authentic.

Provide electronic signatures in the following formats:

(1) A digital signature from an encryption application;

(2) A digitized image of a paper signature; or

(3) Any other unique form or individual identification that can be used as a means of authenticating a record, record entry, or document.

If signing a document by wet signature, scan the complete document into an electronic format.

103.08 Issue Resolution. (Added Subsection).

Resolve project issues at the lowest authorized level and in the most expedient manner possible. Escalate unresolved issues to the next higher level in a timely manner to avoid adverse impacts to costs, risks, or time. Either party may request an issue be escalated. Submit requests in writing. Upon the request of either party, both parties must escalate the issue. An exception to escalating an issue may be observed when both parties agree extra time is needed for the development of facts.

Decision making is encouraged to be made at the lowest authorized level. Recommendations, options, and ideas by all team members are requested. Decisions made at the lowest level possible will be supported by all management levels. Countermands of decisions will not be permitted, except where there is a conflict with code, regulation, law, the contract, or a change of critical facts or information which causes a re-evaluation of the resolution. Support of a countermand by the original decision team is critical. All Contractor and Government team members must understand why the change is necessary and must be able to support it.

Section 104. — CONTROL OF WORK

06/15/2022– FP-14

104.03 Specifications and Drawings. Amend as follows:

Delete the first paragraph of Subsection (a) and substitute the following:

(a) General. Submittals include both documents and drawings required to construct the work. Review submittals for accuracy, completeness, and compliance with the contract. Verify submittals according to Section 153. Submittals that do not include evidence of Contractor verification may be returned for resubmission.

Submit documents in an electronic format for approval. Submit drawings in both paper and electronic format for approval. See Subsection 103.06.

Time for approval starts over when submittals are returned for revision or if additional information is requested by the CO. Do not perform work related to submitted documents or drawings before approval of the CO. Obtain written approval before changing or deviating from the approved submittals.

Delete Subsection (a)(1) and substitute the following:

(1) Documents other than drawings. Documents other than drawings include descriptive literature, illustrations, schedules, performance and test data, certifications, and similar material submitted by the Contractor to certify or explain, in detail, specific portions of the work required by the Contract. Allow 14 days for approval by the CO unless otherwise specified.

Delete the first sentence in the last paragraph of Subsection (a)(2) and substitute the following:

Submit 3 paper sets of drawings, and an electronic set of drawings with supporting calculations.

Delete Subsection (b)(2)(i) and substitute the following:

(i) Concrete box culvert with load ratings and supporting calculations, headwall, and wingwall details, precast or cast-in-place concrete foundations;

104.04 Coordination of Contract Documents. Delete the text of this Subsection and substitute the following:

The FAR, TAR, Basic Contract, special contract requirements, plans, and standard specifications are contract documents. A requirement in one document is binding as though occurring in all the contract documents. The contract documents are intended to be complementary and to describe and provide for a complete contract. In case of discrepancy, calculated and shown dimensions govern over scaled dimensions. The contract documents govern in the following order:

(a) Federal Acquisition Regulations;

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- (b) Transportation Acquisition Regulations;
- (c) Basic IDIQ Contract;
- (d) Special Contract Requirements (SCRs);
- (e) Plans; and
- (f) Standard specifications.

104.05 Load Restrictions. Add the following:

Unless otherwise permitted, do not operate equipment or vehicles that exceed the legal load limits over new or existing structures. Submit a plan to utilize existing or new structures as temporary works or work platforms according to Section 562.

Comply with all legal load restrictions in the hauling of materials. Use Wyoming Department of Transportation loading restrictions for Highway 26/89/191.

All construction equipment and haul vehicles must use Highway 89 (Outside Highway) to access the construction site. No contractor equipment greater than 22' length is permitted on Spring Gulch Road east of the entrance to Jackson Hole Golf and Country Club.

104.06 Other Contracts. (Added Subsection).

Follow the requirements of FAR Clause 52.236-8 Other Contracts.

The following project will be in construction concurrently; coordinate to minimize delays of public and construction traffic through all projects.

- (a) Moose Wilson Road Ph. 1 – WY NPS GRTE 2017(1); and
- (b) Moose Wilson Road Ph. 2 – WY NPS GRTE 2020(1).

Section 105. — CONTROL OF MATERIAL

04/02/21– FP-14

105.01 Source of Supply and Quality Requirements. Add the following:

Before delivery of select borrow, riprap, and aggregate from sources other than the Government-provided material stockpile, notify the CO and request inspection to ensure sources are free of noxious weeds.

Obtain clearance or eradicate exotic plants by:

(a) Providing Weed free certification. All non-government provided material sources and materials incorporated into the work must be sourced and stored in Teton, Park, or Sublette counties (state of Wyoming) and must be currently certified to be free from noxious weeds, invasive plants, and other deleterious materials by a federal, state, or local public agency. Commercial certifications may be acceptable if materials have been certified through the North American Weed Free Forage Program standard or a similarly recognized certification process approved by the CO. Submit material certifications to the CO for approval at least 14 days prior to their use in the work. Request for inspections by Park staff requires a minimum 21-day notice. Once materials are transported from a certified weed free source and storage area, do not stockpile outside of the Park boundary.

(b) Heating Material. Material may be obtained from other locations outside the three counties listed above, if all the material is heated to 305 °F to ensure sterilization of any exotic plants before delivery of material. Do not perform heating operations within park boundaries. Do not stockpile the material outside the park boundaries after heating. Heating material may also be acceptable in lieu of certification for materials obtained from Teton, Park, or Sublette counties (state of Wyoming) with approval from the CO.

(c) Inspection of Government-provided material stockpile. Notify the CO at least 14 days before beginning operations or starting crushing to allow for investigations for exotic plants. If exotic plants are found, the CO will determine if the upper portion of the source will need to be stripped or sprayed with an herbicide approved by the CO. If spraying is required, provide a licensed operator to spray according to applicable state and federal regulations. Do not spray any herbicides until approved in writing by the CO. Spraying or stripping of material does not, necessarily, constitute approval.

105.02 Material Sources. Amend as follows:

(a) Government-provided sources. Delete this Subsection and substitute the following:

There are no Government-provided sources for this project.

(b) Government-provided material stockpile. Delete this Subsection and substitute the following:

Timber mats are available at the RKO Staging area for use in accordance with Subsection 105.04.

Boulders for use in boulder (bike rack) are available at the Kelly Staging Area or Beaver Creek Pit in accordance with Section 251.

Sign system, government furnished (type 1) and (type 2) are available in accordance with Section 633.

Obtain placed riprap from RKO Pit for use in accordance with Section 251. RKO pit is estimated to contain 140 cubic yards of riprap material.

Fixture, bench (government furnished) is available in accordance with Section 646.

(c) Contractor-located sources. Delete the text of this Subsection and substitute the following:

The Contractor is responsible for Contractor-located material sources, including established commercial material sources. Use sources that fulfill the contract quantity and quality requirements. Determine the quantity, type of equipment, and work necessary to select and produce an acceptable material. Secure permits and clearances for use of the source and submit copies of the documents to the CO. Follow the environmental requirements of Subsection 107.10(d) and anticipate a minimum of 60 days for approvals for use of any contractor located site or source. Submit available historical data indicating acceptable material can be produced from the source. Perform quality control sampling and testing according to the approved Contractor Quality Control Plan in Section 153, aggregate source quality tests, and applicable Sampling, Testing, and Acceptance Requirements table included at the end of each Section. Allow the CO the opportunity to witness sampling and splitting of the test material.

105.02A Water Source. (Added Subsection).

Water may be obtained from Enterprise Irrigation ditch. This is a seasonal ditch. Use the Gros Ventre Road, which intersects Highway 89 (Outside Highway) and access the ditch from the approach road at mile post 1.25, on the south side of Gros Ventre Road. Approximate Global Positioning System (GPS) coordinates for the area are N43°35'2.98"/W110°42'46.84"W.

Water may be obtained from the Enterprise Irrigation ditch at the location designated in Subsection 105.02A. Access must be coordinated with the Enterprise Ditch operator. The cost for access and water is a one time fee of \$500 to be paid by the Contractor, directly to the operator below. Contractor will provide receipt of payment to the CO, prior to drawing water from Enterprise ditch.

Keith Hall, President
Grand Teton Meadows Owners Association
P.O. Box 1482, 655 Ponderosa Loop
Jackson, WY 83001
(C) 307-413-1715
jkhconsult@charter.net

For water pumping at the Enterprise irrigation ditch provide a screen on pump intake. Screen opening will not exceed $\frac{1}{16}$ inches. Other apparatuses may be used to ensure that particles larger than $\frac{1}{16}$ inch do not enter pump intake.

Ensure water withdrawals do not exceed 20,000 gallons per day.

Ensure pumps are adequately diapiered or placed in a containment structure to contain any leaks or spills.

105.04 Storing and Handling Material. Delete the text of the second paragraph and substitute the following:

Use Government-provided staging and stockpile sites according to the following:

Prior to beginning work in any of the government provided staging, storage, and stockpile sites, provide 7-foot long metal T-posts to the CO for identification of available areas for use under this contract. The CO will use provided posts to mark the four corners of available areas in each government-provided staging and stockpile site. The Contractor will then finish marking the perimeter of each area by placing 7-foot metal T-posts at 100-foot intervals. Provide US Commercial Standard T-posts painted green with anchor plates.

Install construction fencing around each of the staging, storage, and stockpile areas.

(a) NPS Spread Creek Staging Area. The “Contractor staging and stockpile limits” area of the NPS Spread Creek Staging Area shown on the plans is available for general construction staging. No staging of equipment other than that which is necessary for obtaining material, haul vehicles, and loading vehicles will be allowed in the NPS Spread Creek Staging Area. Other contractors stage equipment and material at this site. Do not disrupt daily activities of the Park and other contractors at this site. Approximate GPS coordinates for the area are N43°46’34”/ W 110°30’34”.

If the Contractor elects to store material in the NPS Spread Creek Staging Area, the following restrictions apply:

(1) Operation in the NPS Spread Creek Staging Area is allowed between the hours of 6:00 a.m. and 9:00 p.m. beginning June 30 through October 31. Additionally, operation in the pit is not permitted during the first three weekends of the fall rifle elk hunting season from 9:00 p.m. Friday evening to 7:00 a.m. the following Monday. Inquire locally for hunting season dates. No construction operations other than retrieving stockpiled material are permitted in NPS Spread Creek Staging Area.

(2) The existing gate at the junction of Highway 26/89/191 and the access road to NPS Spread Creek Staging Area access road (USFS 30290) must be maintained in the opened position and locked in-place.

(3) Do not delay traffic for more than 5 minutes along any portion of the NPS Spread Creek Staging Area access road (USFS 30290).

(4) Provide and maintain portable toilets and other temporary sanitation facilities that are bear-resistant in accordance with Subsection 107.08.

(5) Clean all equipment according to Subsection 107.11(a).

(6) Maintain access through the area at all times during work at the staging site.

(7) Do not use the existing Forest Service access road located south of the Spread Creek Pit site.

(8) No noise above 10 decibels above ambient between 6:00 p.m. and 9:00 a.m. from March 1 to May 15.

(b) RKO Staging Area. The “Contractor Timber Mat Area” at the RKO Staging Area are shown on the plans. Refer to the Vicinity Map to identify the approximate location of the RKO Pit. RKO has been provided for storage of government provided stabilized construction exit timber mat system materials. Up to 33 timber mats will be available for use from the RKO Staging Area. Transport to project sites as required and return to the RKO Staging Area at the completion of their use. Transport all timber mat system materials, used during the execution of this contract and extra mats not used but initially hauled to the project site, back to the RKO staging area for final storage. Pressure washing the mats outside of the Park limits is required. Clean the timber mats of all soil and debris prior to stockpiling at RKO. Other than timber mat retrieval and storage no other use is permitted within RKO. This includes, but is not limited to staging of materials and driving outside the designated turn-around area.

(c) Kelly Staging Area. The “Contractor Equipment Staging Area” of the Kelly Staging Area as shown on the plans is available for temporary staging of construction equipment and other materials approved by the CO. Maintain 24-hour access as shown on the plans. The Park Maintenance Department and other contractors stage equipment and material at this site. Do not disrupt daily activities of the Park and other contractors at this site.

(1) Operation in Kelly Staging Area is allowed between the hours of 7:00 a.m. and 9:00 p.m. during the contract duration. No construction operations other than stockpiling and retrieving stockpiled material are permitted in Kelly Staging Area.

(2) Install construction fence to contain disturbance to inside the pit and within designated areas, and to protect the surrounding, undisturbed vegetation. Maintain material piles 5 feet away from construction fence to eliminate material spill over into undisturbed locations.

(3) At least 14 days before beginning operations in the Kelly Staging area submit an operation plan for approval by the CO. Show locations of usage areas and material stockpiles. Submit a revised operation plan within 7 days when the actual operations in the pit are different from that represented in the approved plan.

(4) Clean all equipment according to Subsection 107.11(a).

(5) Contain all operations within the staging and stockpile areas. Protect all existing vegetation unless approved in writing by the CO.

(6) Provide the CO with four T-posts 7 days prior to start of excavation. The CO will mark out the designated area allowed to place the excess material.

(d) Airport Pit Staging Area. The “Contractor Equipment Staging Area” is a 75 foot by 50 foot area of the Airport Pit Staging Area, and is available for temporary staging of construction equipment and other materials approved by the CO. Maintain 24-hour access. The Park Maintenance Department and other contractors stage equipment and material at this site. Do not disrupt daily activities of the Park and other contractors at this site. Approximate GPS coordinates for the pit are N 43°35'51.57"/W 110°43'15.54".

(1) Operation in Airport Pit Staging Area is allowed between the hours of 7:00 a.m. and 9:00 p.m. during the contract duration. No construction operations other than stockpiling and retrieving stockpiled material are permitted in Airport Pit Staging Area.

(2) Install construction fence to contain disturbance to inside the pit and within designated areas, and to protect the surrounding, undisturbed vegetation. Maintain material piles 5 feet away from construction fence to eliminate material spill over into undisturbed locations.

(3) At least 14 days before beginning operations in the Airport Pit Staging area submit an operation plan for approval by the CO. Show locations of usage areas and material stockpiles. Submit a revised operation plan within 7 days when the actual operations in the pit are different from that represented in the approved plan.

(4) Clean all equipment according to Subsection 107.11(a).

(5) Contain all operations within the staging and stockpile areas. Protect all existing vegetation unless approved in writing by the CO.

(6) Provide the CO with four T-posts 7 days prior to start of excavation. The CO will mark out the designated area allowed to place the excess material.

Do not disturb the area beyond the approved staging areas and areas identified for Contractor use.

Provide additional space as needed. Do not use private property for staging, storage, or disposal without written permission of the owner or lessee and prior to completion of the requirements of subsection 107.10(d). Submit copies of agreements and documents and do not use property until approved by CO.

Section 106. — ACCEPTANCE OF WORK

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106.01 Conformity with Contract Requirements. Amend as follows:

Add the following to the second paragraph:

Use the procedures for sampling and testing contained in the WFLHD *Sampling and Testing Methods*, except, when a specified sampling or test method is not included in this supplement, sample and test according to the referenced test procedure.

Delete the third paragraph and substitute the following:

Use the FLH *Field Materials Manual (FMM)*, *Appendix B: FLH Test Methods* in effect on the date of the IFB or RFP. Electronic copies of the FLH Test Methods can be downloaded from:

<https://highways.dot.gov/federal-lands/materials/field-materials-manual>

Delete the fourteenth paragraph and substitute the following:

Remove, repair, or replace work that does not conform to the contract, or to prevailing industry standards where no specific contract requirements are noted. Remove, repair, or replace work; provide temporary traffic control; and perform other related work to correct nonconformities at no cost to the Government.

Add the following:

Obtain copies of the following documents at:

<https://highways.dot.gov/federal-lands/construction/paynotes>

- *Construction Paynote Examples*, dated August 2011.

Obtain copies of the following documents at:

<https://highways.dot.gov/federal-lands/materials>

- *WFLHD Sampling and Testing Methods*;
- *Materials Testing Forms*;
- *FLH T 521 – Standard Method of Test for Determining Riprap Gradation by Wolman Count*; and
- *FLH Addendum to AASHTO T 308 – Standard Method of Test for Correction Factors for Hot Mix Asphalt (HMA) Containing Recycled Asphalt Pavement (RAP) by the Ignition Method*.

106.02 Visual Inspection. Delete the text of this Subsection and substitute the following:

Acceptance is based on visual inspection of the work for compliance with the specific contract requirements. Use prevailing industry standards in the absence of specific contract requirements or tolerances.

106.03 Certification. Add the following after the second paragraph:

Obtain required certifications and maintain records of all required certifications according to Subsections 103.04, 153.04, and 155.07.

Submit a completed Form WFLHD 87 *Certification of Compliance* with each material requiring a certification. An electronic version may be found at:

<https://highways.dot.gov/federal-lands/construction/forms-wfl>

Submit all certifications to the CO unless otherwise specified in the Section ordering the work.

Section 107. — LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

01/06/23(1)– FP-14

107.01 Laws to be Observed. Amend as follows:

Delete the third paragraph and substitute the following:

Comply with the terms and conditions included in all permits and agreements required for performing the work included in this contract. Notify the CO immediately of any permits or agreements that are required by the Contractor's methods of operation. Allow adequate time in the construction schedule for any permits or agreements. Furnish copies of all permits and agreements that are not in the contract.

Add the following:

Comply with the requirements of the Fire Protection and Suppression Plan included in this contract (See Section I).

107.02 Protection and Restoration of Property and Landscape. Amend as follows:

Delete the third paragraph and substitute the following:

Do not disturb any area outside the construction limits unless authorized according to Subsections 105.02(c) and 107.10(d). Replace trees, shrubs, or vegetated areas outside the construction limits damaged by construction operations as directed and at no cost to the Government. Only remove damaged limbs of existing trees when directed by an approved arborist.

Add the following to the fourth paragraph:

Paleontological remains and archeological specimens found within the construction area are the property of the National Park Service and will be removed only by the National Park Service or designated representatives. Should the Contractor's operations, employees, or subcontractors' operations uncover or find any paleontological remains or archeological specimens, immediately suspend operations at the site of discovery and notify the CO immediately of the findings. Prepare a notification that includes a brief statement of the location and details leading to the finding. Operations may continue in other areas as approved by the CO that would not affect the site of discovery if the CO approves.

Add the following after the sixth paragraph:

Power:

Lower Valley Energy
Ms. Jan Woodmancy
Customer Service Engineer
PO Box 572
4000 South Highway 89
Jackson, WY 83001
Phone: 307-733-2446

Telecommunication:

Century Link Communications
Kimberly Hessell
Sr. Manager of Local Network Implementation - WY
4719 Ridge Road
Cheyenne, Wyoming 82009
Kimberly.hessell@centurylink.com
Cell: 307-630-4402

Silverstar Communications, Inc.
Rob Heiner
PO Box 226
Freedom, WY 83120
Office: 307-880-6696
rheiner@silverstar.net

Park Facilities (Water, Power, Sewer, & Telecommunications):

Grand Teton National Park
Mrs. Jessica Brown
Grand Teton Park Landscape Architect
PO Drawer 170
jessica_h_brown@nps.gov
Moose, WY 83012-0170
Office: 307-739-3578

Construction requirements. Maintain as-built drawings according to Subsection 104.03(c). Maintain an additional two sets of utility drawings showing existing facilities, installed facilities, abandoned facilities and modified facilities. Survey new locations of relocated utilities according to Section 152. Provide survey data to the government in electronic Comma Separated Value (CSV) format.

Add the following to the ninth paragraph:

Provided that such damage is not the result of an inadequate verification/location process or failure to perform all or any part of the defined process or not otherwise caused by the fault or negligence of the Contractor.

Grand Teton National Park. To prevent damage to existing asphalt concrete pavement, provide a plan for protecting the existing pavement surface on Spring Gulch Road and Sagebrush Drive to

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a point parallel on the proposed pathway construction and to the pathway connections at the beginning and ending prior to performing work.

Address specific protection methods on submitted schedules and plans according to Section 155 and Section 156.

Repair pavement damage to all paved surfaces used during Contractor operations, Spring Gulch Road and Sagebrush Drive, and Grand Teton Park Pathways included. Damage to the pavement includes cracked or broken pavement, deformation of the existing pavement surface greater than $\frac{3}{4}$ inch, and gouges and cuts greater than $\frac{3}{4}$ inch in depth.

Minimum repair for pavement damage will consist of removal and replacement of the full depth of pavement. Remove pavement from centerline to edge of pavement (width) and 3 feet on each side (length) of damaged area limits.

Submit a plan for pavement repair within 7 days after notification of required repair. Complete all pavement repairs within 14 days after approval of pavement repair plan.

Damage and repair will be evaluated under Subsection 106.02.

Add the following:

The Government has notified the ditch operators of the potential impacts and proposed crossings. Notify the following at least 30 days in advance of construction.

Price and Lucas Ditch

Grand Teton Property Management
Tina Korpi
307-733-0205
tkorpi@gtpmjh.com

Buckskin and May Ditch

Jackson Hole Golf and Tennis Club
Greg Dillard
307-733-7802
gdillard@gtlc.com

Cyclone Ditch

Jackson Hole Aviation
Jeff Brown
307-733-4767
jeff@jhaviation.com

107.03A Public Notice. (Added Subsection).

Prior to beginning any pathway work at the start of the week, send an email with the following information:

- (a) Description of work and general operations planned;

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- (b) Location of work referenced to local landmarks and pathway stationing;
- (c) Construction operations that will affect traffic;
- (d) Expected delays including delay periods, durations and locations, and
- (e) Periods when the road is open to traffic without delay, etc.

Send this E-mail weekly to the CO, bschilling@tetoncountywy.gov, [Jessica h brown@nps.gov](mailto:Jessica_h_brown@nps.gov) and Park Dispatch at grte_dispatch@nps.gov. The CO may provide a supplemental list of E-mail contacts to be copied.

107.08 Sanitation, Health, and Safety. Add the following after the first paragraph:

Submit an accident prevention plan for implementing safety and health standards at the Preconstruction Conference. Use the Government furnished Form WFLHD-28, *Guide Outline of Contractor's Accident Prevention Plan*.

107.10 Environmental Protection. Amend as follows:

(b) Oil and hazardous substances. Add the following:

Inspect all vehicles and equipment conducting operations in or within 100 feet of wetlands or water daily for fluid leaks. Develop a Spill Prevention Control and Countermeasure plan if above ground storage of petroleum products exceeds 1320 gallons in total or more than 660 gallons in a single tank.

Immediately remove hazardous waste materials from projects sites using spill-proof containers.

(c) Dirt, plant, and foreign material. Delete the first paragraph and substitute the following:

Remove dirt, plant, and foreign material from vehicles and equipment before entry into the Park. Prevent introduction of noxious weeds and non-native plant species into the work site. Follow applicable Federal land management agency requirements and state requirements. Maintain cleaning and inspection records. Clean hauling vehicles before their initial entry; subsequent entries will not require cleaning unless requested. Clean excavation equipment involved in topsoil removal outside Park limits. Steam clean all earth-moving equipment (including hauling vehicles) and pile driver equipment of mud and weed seed before their initial entry into the Park. Notify the CO a minimum of 48 hours before entry to allow for inspection.

Clean all vehicles and equipment to remove all visible traces of soil, plant material, debris, and petroleum from wheels, tires, tracks, drive mechanisms, undercarriages, etc. Only materials and equipment free of toxic pollutants may be placed within wetlands and waters.

(d) Clearances for Contractor-selected, noncommercial areas. Delete this Subsection and substitute the following:

(d) Sites outside construction limits. Activities outside the construction limits include, but are not limited to the following; material sources, waste sites, haul roads, staging areas, and water sources. Provide the following documents to the CO and anticipate a minimum of 60 days for approvals. Do not use sites or sources until approved by CO.

The requirements (1) through (6) below do not apply to Government designated sites or sources or commercial sites or sources that are established, have provided material over the last two years, have appropriate Federal, State and local permits, and do not require expansion outside their currently established and permitted area.

(1) Proposed activity description. Submit a description, schedule, and location of the proposed activities for approval by the CO. Include maps of the area and other relevant information.

(2) Cultural resources. Submit written documentation satisfactory to the CO for a recommendation of either "no historic properties affected" or "no effect" according to 36 CFR 800.4(d)(1) for historic properties on or eligible for listing to the National Register of Historic Places. Provide either:

(a) Documentation showing there are no cultural resources present, and a recommendation of either "no historic properties affected" or "no effect" according to 36 CFR 800.4(d)(1). Documents must be prepared by an individual qualified under the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 48 FR 44738-44739 and 36 CFR Part 61.

Documentation must be satisfactory to the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) as appropriate, according to 36 CFR 800.3(c).

The CO will submit the documentation to the SHPO or THPO.; or

(b) Documentation showing a finding of either "no historic properties affected" or "no effect" according to 36 CFR 800.4(d)(1) has been previously obtained for the proposed activities from the State, Tribal Government or Federal Land Management Agency responsible for the land. Include attached copies of SHPO concurrence, or Memorandum of Agreement (MOA) where concurrence is not required.

(3) Species protected under the Endangered Species Act of 1973. Submit written documentation satisfactory to the CO that the proposed action will have no effect to any threatened or endangered species or their critical habitat. Provide either:

(a) A current list of all threatened or endangered species in the site of proposed activities from the U.S. Fish and Wildlife Service and National Marine Fisheries Service; and a recommendation of a "no effect" determination according to Section 7 of the Endangered Species Act prepared by a biological specialist with a minimum of

3 years of experience in Endangered Species Act compliance or other qualifications acceptable to the CO. or

(b) Documentation showing the proposed activities have previously been determined to comply with the Endangered Species Act and this determination remains valid. This documentation must be from the State, Tribal Government or Federal Land Management Agency responsible for the land. Attach evidence of compliance, including correspondence with the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

(4) Wetlands and Waters. Submit written documentation satisfactory to the CO, that the proposed action will comply with Sections 404 and 401 of the Clean Water Act, Executive Order 11990, and will not affect any wetlands or waters under Federal, State, or local jurisdiction. Documentation must be prepared by a wetland specialist with a minimum of 3 years of experience in wetland and ordinary high water mark delineation.

(5) Federal lands. Before use of sites on Federal lands, submit a copy of the Letter of Approval or Special Use Permit from the applicable Federal agency allowing use of the site for intended purposes.

(6) Tribal, state and local approvals. Comply with applicable laws regarding the proposed activities. Submit copies of required clearances, including hazardous waste compliance, tribal, State and local permits and approvals.

Add the following:

(e) Other requirements. Comply with the following requirements:

(1) Separate work areas from active stream flow. Remove all temporary structures from all impacted waterbodies at the conclusion of the permitted activity. Restore the area to its natural appearance.

(2) Provide intake structures with adequate fish screening devices to prevent the entrainment or capture of fish. Move stranded fish found in the dewatered channel to a downstream location.

(3) Do not operate construction equipment below existing water surface except as follows:

(1) Fording at one location is acceptable; however, vehicles should not push or pull material along the bed or banks below the existing water level. Minimize impacts from fording.

(2) Work below the waterline which is essential must be carried out in a manner which minimizes impacts to the aquatic system and water quality.

(4) Use biodegradable vegetable-based oil in any equipment that operates over or reaches into wetlands or waters of the US.

- (5) If active bird nests are identified during clearing operations, suspend work immediately and notify the CO within 1 hour. Obtain approval from the CO before restarting operations.
- (6) Notify CO within 24 hours of locating a dead, injured, or sick endangered or threatened species. Listed wildlife species include Canada lynx, gray wolf, grizzly bear, black-footed ferret, wolverine, yellow-billed cuckoo, and monarch butterfly. Provide CO date, time, precise location of the injured animal or carcass, and any other pertinent information. Do not disturb any evidence associated with the specimen.
- (7) Do not disturb, feed, and/or approach any wildlife species (e.g., reptiles, birds, raptors, or bats) found nesting, hibernating, or otherwise living in, or immediately nearby, worksites.
- (8) Do not allow equipment to idle longer than 10 minutes.
- (9) Remove all trash from the project site daily and dispose of trash as appropriate and according to Subsection 203.05.
- (10) Conduct machinery maintenance and refueling at a distance of 100 feet or greater from any wetlands or waters. Refueling of equipment may occur within 100 feet of waterbodies if spill prevention measures are in place and if approved by the CO.
- (11) When operating stationary equipment (e.g., generators, cranes, etc.) within 100 feet of any wetlands or waters. Furnish and install CO approved secondary containment measures. Inspect equipment for fluid leaks daily, and address all fluid leaks according to Subsection 107.10(b).
- (12) Use absorbent pads, booms, and other materials on construction sites that involve heavy equipment to contain oil, hydraulic fluid, solvents, and hazardous material spills.
- (13) When construction is ended prior to a winter season, protect all disturbed areas and soil stockpiles from snowmelt impacts by using erosion-control best management practices for subsoil, and soil conservation practices for topsoil.
- (14) Enclose fueling and fuel storage areas with berms and lining to contain spills.
- (15) Inspect construction equipment for fluid leaks, including hydraulic and oil leaks prior to use on construction sites, and implement inspection schedules to prevent contamination of soil and water. Promptly clean up any leaks or accidental spills, such as hydraulic fluid, oil, fuel, or antifreeze from construction equipment.

107.11 Protection of Forests, Parks, and Public Lands. Add the following:

Comply with the following:

- (a) Do not operate or park any vehicles or equipment outside the construction limits. In any area where the construction limits are not otherwise defined, do not operate or park any

vehicles or equipment off the paved roadway except in approved areas according to Subsection 105.04.

(b) Do not sleep in vehicles or camp within the Park or National Forest boundaries.

(c) Do not use explosive material within the Park or National Forest boundaries.

(d) Store and handle food, fuel, or other attractants in a manner that does not attract bears, i.e., no food, pet food, garbage, drinks, trash, or food and drink containers (including water bottles) will be placed outside vehicles, trailers, buildings, or bear-resistant containers except during actual use. Contractor supplied garbage bins must be bear proof and meet Park requirements. Any mishandling of garbage, trash, food, and other potential bear attractants described above will result in the responsible person, and/or Contractor, receiving a citation which may include a fine. Remove from the project any employee who receives more than one citation for a food storage violation.

(e) Immediately report all bear and wolf sightings and any carcasses found or observed to the Teton Interagency Dispatch Center (TIDC) at 307-739-3301.

(f) Temporarily suspend construction activities according to Subsection 108.06 when a migratory bird nest is discovered or identified or when a grizzly bear or wolf comes near an active construction area and creates a potential animal/human conflict. Immediately notify the CO and TIDC for resolution of any potential bear/human conflicts or of actual bear/human confrontations. Notify the CO and Park representative of any migratory bird nests. Contractor, Subcontractor, and employees may be required to carry bear pepper spray as a condition of being allowed to continue operations in areas of bear activity. The Government will not supply bear pepper spray.

(g) Immediately remove all debris that falls into any stream as a result of construction operations.

(h) All Contractor, Subcontractor and employees will attend Park orientation meetings presented by the NPS prior to beginning work. Notify the CO 14 days prior to beginning work and 7 days before adding staff so orientations can be scheduled.

(i) Do not carry any firearms while working within the Park or National Forest boundaries.

(j) Do not use engine braking systems while driving unloaded anywhere in the Park. Do not use engine braking systems in the vicinity of wildlife, pedestrians, bicyclists, or populated areas.

(k) Equip all motor vehicles and equipment at all times with mufflers conforming to original manufacturers specifications. Ensure that they are in good working order to prevent excessive or unusual noise.

(l) Comply Park closures implemented around wolf den/rendezvous sites. Seasonal area closures may be implemented up to 1 mile around den/rendezvous sites as needed, typically between April 15 and August 15.

(m) Comply with the Park's closures implemented around active bald eagle nests. Seasonal area closures may be implemented up to ½ mile around active bald eagle nests as needed, typically between February 1 and April 15.

(n) Comply with the Park's closures implemented around active nesting sites. Seasonal area closures may be implemented up to ¼ mile around active nesting sites of raptors (other than bald eagle), trumpeter swans, great blue herons and other sensitive bird species as needed.

(o) Comply with the Migratory Bird Treaty Act of 1918 (MBTA; 16 U.S.C. 703) and Executive Order 13186.

(1) Complete work involving vegetation clearing, tree felling, fill placement, excavation, or other construction activities outside of the nesting season, May 1 to August 1 for songbirds or as dictated by nesting chronology. If activities that involve removal or manipulation of vegetation including large trees, grasses, and shrubs must occur during the nesting season (May 1 to August 1) then nesting bird surveys must be conducted by a park staff before tree removal and/or ground disturbing activities begin. Provide two-week advanced notification for park staff to complete surveys. Work must be completed within two weeks of nesting bird survey.

(2) Report any nesting bird activity in the vicinity of proposed activity to the Park within one hour so that they may assess whether additional mitigation measures are needed to comply with the MBTA.

(p) Fence around open holes when personnel are not present and provide for a slope out of the hole such that wildlife trapped in the excavation may be able to escape. Cover post holes and other narrow cavities or crevices to prevent wildlife entrapment.

(q) Implement a dust abatement program. Standard dust abatement measures may include the following elements:

(1) Water spraying or otherwise stabilizing soils;

(2) Covering haul trucks;

(3) Employing speed limits on unpaved roads;

(4) Minimizing vegetation clearing; and

(5) Revegetating after construction.

(r) Do not collect artifacts. Do not damage archeological sites or historic properties.

107.12 Contractor's Camp. (Added Subsection).

Camping or temporarily residing for any length of time by Contractor employees is not allowed on the National Forest or Park.

Section 108. — PROSECUTION AND PROGRESS

01/06/23– FP-14

108.01 Commencement, Prosecution, and Completion of Work. Amend as follows:

Delete the text of the second paragraph and substitute the following:

A preconstruction conference will be held after the task order is awarded and before beginning work. A baseline schedule submittal meeting is also required according to Subsection 155.10. The schedule manager, project manager, and project superintendent are required to attend the preconstruction conference and the schedule submittal meeting unless otherwise approved by the CO.

Do not begin on-site ground disturbing activities or Section 151 mobilization within the construction limits prior to approval of the baseline schedule submittal. Only construction surveying and staking, temporary traffic control, and work under Section 637 is allowed before approval of the baseline schedule submittal.

Add the following:

Furnish at least a 48-hour advanced notice before changing the current work schedule. Work schedule changes that include additional shifts require a 14-day advanced notice.

Perform work under this contract by limiting work as provided for in Sections 105, 107, 156, and 157.

Perform work under this contract according to the following:

(a) Do not perform construction operations during the following periods and according to Section 156:

(1) Between 6:00 p.m. Friday and 8:00 a.m. the following Tuesday of the Memorial Day weekend;

(2) Between 6:00 p.m. Friday and 8:00 a.m. the following Tuesday of Labor Day weekend;

(3) Between 6:00 p.m. Friday and 8:00 a.m. the following Monday unless requested in writing 14 days prior to and authorized by the CO;

(4) Do not perform construction operations which interfere with public travel on the roadway on any other holiday according to Subsection 101.04, unless approved by the CO.

(b) Limit work that disturbs the surface of the traveled way as provided for under Subsections 156.04 and 156.06.

(c) No onsite work activities before Tuesday September 5, 2023.

(d) Complete concrete box culverts installation between September 15, 2023 and November 15, 2023.

Special Contract Requirements

Project: WY FLAP TET TR200(1), Sagebrush Connector Pathway

(e) Notify the CO 14 days prior to commencing any clearing activities. Clear the areas within the clearing limits prior to October 1, 2023.

(f) Winter shutdown November 15, 2023 to June 3, 2024

(g) Do not perform work between 6:00 p.m. and 8:00 a.m. unless approved by CO.

108.01A Labor. (Added Subsection).

Follow the requirements of FAR Clause 52.222-6 Construction Wage Rate Requirements.

Adjacent or virtually adjacent work sites, as used in FAR Clause 52.222-6, are defined to be work sites within ½ mile of the project. Application of Construction Wage Rate Requirements (Davis-Bacon Act) for work sites beyond ½ mile of the project will be determined by the CO.

NPS Spread Creek Staging Area, RKO Staging Area, Airport Pit and Kelly Staging Area have been determined to be adjacent or virtually adjacent to the project. The requirements of FAR 52.222-6 Construction Wage Rate Requirements (Davis-Bacon Act) will apply.

108.02 Subcontracting Amend as follows:

Delete the text of the first paragraph and substitute the following:

Follow the requirements of FAR Clause 52.222-11 Subcontracts (Labor Standards) and FAR Clause 52.236-1 Performance of Work by the Contractor.

Delete the last paragraph and substitute the following:

In FAR Clause 52.236-1 Performance of Work, the percentage of work performed by the Contractor will be computed as the cost of the contract work performed on-site by the Contractor's employees divided by the total cost of the contract.

108.03 Determination and Extension of Contract Time. Add the following to paragraph (c):

No adjustment in contract time or amount will be made for stop orders issued under Subsection 108.05(a) or (b), except an adjustment in contract time, as provided by FAR Clause 52.249-10 Default (Fixed-Price Construction), may be made when the Contractor is able to demonstrate that the weather was unusually severe based on the most recent 10 years of historical data.

108.04 Failure to Complete Work on Time

Delete this Subsection and substitute the following:

Follow the requirements of FAR Clause 52.211-12 Liquidated Damages — Construction.

Liquidated damages in the amount specified in Table 108-1 will be assessed for each calendar day beyond the time specified in the contract until substantial completion of the work.

Special Contract Requirements

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Liquidated damages will not be assessed for the following:

- (a) The day of the final inspection.
- (b) Days required to perform work added to the contract after substantial completion including items identified during the final inspection that were not required before that time.
- (c) Delays by the Government after all work is complete and before a formal acceptance is executed.
- (d) Periods of time when all work is complete but acceptance is delayed pending the plant establishment period or similar warranty period.
- (e) During winter shutdown periods ordered by the CO.

Table 108-1
Charge for Liquidated Damages for Each Day
Work Is Not Substantially Completed

Original Contract Price		Daily Charge
From More Than —	To and Including —	
\$ 0	\$ 1,000,000	\$ 1,000
\$ 1,000,000	\$ 2,000,000	\$ 1,800
\$ 2,000,000	\$ 5,000,000	\$ 3,500
\$ 5,000,000	\$ 10,000,000	\$ 4,400
\$ 10,000,000	and more	\$ 5,200

108.05 Stop Order. Delete the last paragraph.

108.06 Suspension. (Added Subsection).

Follow the requirements of FAR Clause 52.242-14 - Suspension of Work.

Suspend work, either in whole or in part, for such periods deemed necessary due to the presence of migratory bird nest, grizzly bears, and wolves. See Subsection 107.10 and 107.11.

Section 109. — MEASUREMENT AND PAYMENT

06/15/22– FP-14

109.01 Measurement of Work. Delete the text of this Subsection and substitute the following:

Take and record measurements and perform calculations to determine pay quantities for invoicing for work performed. Take or convert all measurements of work according to U.S. Customary (Metric) measure.

Unless otherwise specified, measure when the work is in-place and complete according to the contract. Measure the actual work performed, except do not measure work outside the design limits or other adjusted or specified limits (staked limits). Measure structures to the lines according to the plans or to approved lines adjusted to fit field conditions.

Take measurements as described in Subsection 109.02 unless otherwise modified by the Measurement Subsection of the Section controlling the work being performed. For individual pay items, the decimal accuracy for measurement of quantities will be determined by the CO. Decimal accuracy for measurement is one decimal beyond the accuracy of the quantity for payment.

Remeasure quantities if it has been determined that a portion of the work is acceptable, but has not been completed to the lines, grades, and dimensions shown in the plans or established by the CO.

Submit measurement notes within 24 hours of completing work that is in-place and complete according to the contract. For on-going work, submit measurement notes weekly. When work is not complete, identify the measurement as being an interim measurement. Submit the final measurement when the installation is completed. Measurement notes form the basis of the Government's receiving report; see Subsection 109.08(d). For lump sum items, submit documentation that supports invoiced progress payments each month.

Use an acceptable format for measurement notes. Include the following minimum information:

- (a) Project number and name;
- (b) Line item number, pay item number and description;
- (c) Date the work was performed;
- (d) Location of the work;
- (e) Measured quantity;
- (f) Calculations made to arrive at the quantity;
- (g) Supporting sketches and details as needed to clearly define the work performed and the quantity measured;
- (h) Names of persons measuring the work;
- (i) Identification as to whether the measurement is interim or final; and
- (j) Signed certification statement by the persons taking the measurements and performing the calculations, that the measurements and calculations are correct.

Prepare pay item measurement notes on Form FHWA 17-348 *Daily Record of Measurement and Payment*. An electronic version of the form is available at:

<https://highways.dot.gov/federal-lands/construction/forms-wfl>.

109.02 Measurement Terms and Definitions. Delete the text in paragraph (o) and substitute the following:

(o) Square foot and Square yard (Square meter). 1 square yard equals 9 square feet. Measurements for area computations will be made horizontally or vertically to the surface being measured. No deductions from the area computation will be made for individual fixtures having area of 9 square feet (1 square meter) or less. Do not measure overlaps.

109.03 Weighing Procedures and Devices. Amend as follows:

Delete the first paragraph of Subsection (c) and substitute the following:

(c) Project weighing system. Furnish, erect, and maintain acceptable automatic digital scales. For small quantities, manual scales may be used when approved in writing by the CO and if the method of weighing meets all other contract requirements. Provide scales that record mass at least to the nearest 100 pounds (50 kilograms). Maintain the scale accuracy to within 0.5 percent of the correct mass throughout the range of use.

109.03 Weighing Procedures and Devices. Delete paragraph (c)(2) and substitute the following:

(2) Task Order line item number, pay item number and description;

109.04 Receiving Procedures. Delete paragraph (b) and substitute the following:

(b) Task Order line item number, pay item number and description;

109.06 Pricing of Adjustments. Add the following after the third paragraph:

At the preconstruction conference, furnish the following information to the CO, which will be used to price future adjustments and contract modifications.

- **Overhead.** Furnish the CO with a copy of the current certified or audited jobsite and home office overhead costs for the Contractor and Subcontractors. Provide supporting data, which justifies the costs. List costs that are included in overhead and identify the cost pool(s) to which overhead is applied.
- **Equipment.** Furnish the CO with a complete descriptive listing of equipment to be used by the Contractor and Subcontractors, including the make, model, and year of manufacturer of each piece of equipment, including attachments to the base equipment. Furnish the following cost information:

- *Rented Equipment.* Provide current invoices to support rented or leased equipment costs.
- *Owned Equipment.* Determine allowable ownership and operating costs for Contractor- and Subcontractor-owned equipment using actual equipment cost data determined from the operating cost records. If actual equipment cost data is not available, provide the CO with a statement signed by the highest officer or official in the company that such cost data is not available. Also provide a complete set of supporting documentation containing all ownership records that are available, including any purchase records, depreciation records, maintenance records, or other records that relate to the ownership and operating costs for each piece of equipment. When actual costs cannot be determined, use the rates shown in the U.S. Army Corps of Engineers Construction Equipment Ownership and Operating Expense Schedule (CEOES) for the region where costs are incurred. Adjust the rates for used equipment and for other variable parameters used in the schedules. Provide the CO with a completed WFLHD Form 103, proposed CEOES rates for each piece of equipment with supporting calculations, and any other necessary documentation about the equipment to calculate allowable ownership and operating costs using CEOES. An electronic version of the WFLHD Form 103 form is available at: <https://highways.dot.gov/federal-lands/construction/forms-wfl>.

For equipment that is not planned to be used at the time of the preconstruction conference, but is later used on the project, provide required information and data prior to mobilizing the equipment to the project.

109.08 Progress Payments. Amend as follows:

Delete paragraph (b) and substitute the following:

(b) Closing date and invoice submittal date. The closing date for progress payments will be designated by the CO. Include work performed after the closing date in the following month's invoice. For work performed between September and July of any year, submit invoices to the designated billing office by the 7th day after the closing date. Invoices received by the designated billing office after the 16th day following the closing date, for work included in the September through July invoices, will not be accepted for payment processing that month. For work included in the August invoice, submit the invoice to the designated billing office by the 5th day after the closing date. Invoices received by the designated billing office after the 5th day following the closing date, for work included in the August invoice, will not be accepted for payment processing that month. Include late, unprocessed invoice submittals in the following month's invoice.

Delete paragraph (e) and substitute the following:

(e) Processing progress payment requests. No payment will be made for work unless field note documentation for the work was provided by the closing date.

(1) Work performed between September and July.

(a) Invoices received by the 7th day following the closing date.

(1) Proper invoices. If the invoice meets the requirements of Subsection 109.08(c), and the quantities and unit prices shown on the Contractors' invoice agree with the corresponding quantities and unit prices shown on the Governments' receiving report, the invoice will be paid.

(2) Defective invoices. If the invoice does not meet the requirements of Subsection 109.08(c), or if any of the quantities or unit prices shown on the Contractors' invoice exceed the corresponding quantities and unit prices shown on the Governments' receiving report, the invoice will be deemed defective and the Contractor so notified according to FAR Clause 52.232-27(a)(2). Defective invoices will not be corrected by the Government and will be returned to the Contractor within 7 days after the Government's designated billing office receives the invoice.

Revise and resubmit returned invoices by the 18th day following the closing date. The CO will evaluate the revised invoice. If the invoice still does not meet the requirements of Subsection 109.08(c), the Contractor will be so notified according to FAR Clause 52.232-27(a)(2), and no progress payment will be made that month. Correct the deficiencies and resubmit the invoice the following month.

If the revised invoice meets the requirements of Subsection 109.08(c), but still has quantities or unit prices exceeding the corresponding quantities and unit prices shown on the Governments' receiving report, the Government's data for that item of work will be used. The Contractors' invoice, as revised by the Governments' receiving report, will be forwarded for processing by the 23rd day following the closing date. The Contractor will be notified by the 23rd day following the closing date of the reasons for any changes to the invoice.

(b) Invoices received between the 8th and 16th day following the closing date.

(1) Proper invoices. If the invoice meets the requirements of Subsection 109.08(c), and the quantities and unit prices shown on the Contractors' invoice agree with the corresponding quantities and unit prices shown on the COs' receiving report, the invoice will be deemed proper and forwarded for processing within 7 days of receipt.

(2) Defective invoices. If the invoice does not meet the requirements of Subsection 109.08(c), the invoice will be deemed defective, the Contractor so notified according to FAR Clause 52.232 27(a)(2), and no progress payment will be made that month. Correct the deficiencies and resubmit the invoice the following month.

If the invoice meets the requirements of Subsection 109.08(c), but has quantities or unit prices exceeding the corresponding quantities and unit prices shown on the Governments' receiving report, the Government's data for that item of work will be used. The Contractors' invoice, as revised by the Governments' receiving report, will be forwarded for processing within 7 days after receiving the invoice. The Contractor will be notified, within 7 days of the Government's receipt of the invoice, of the reasons for any changes to the invoice.

(2) Work performed during August.

(a) Proper invoices. If the invoice meets the requirements of Subsection 109.08(c), and the quantities and unit prices shown on the Contractor's invoice agree with the corresponding quantities and unit prices shown on the CO's receiving report, the invoice will be deemed proper and forwarded for processing within 7 days of receipt.

(b) Defective invoices. If the invoice does not meet the requirements of Subsection 109.08(c), the invoice will be deemed defective, the Contractor so notified according to FAR Clause 52.232 27(a)(2), and no progress payment will be made that month. Correct the deficiencies and resubmit the invoice the following month.

If the invoice meets the requirements of Subsection 109.08(c), but has quantities or unit prices exceeding the corresponding quantities and unit prices shown on the Governments' receiving report, the Government's data for that item of work will be used. The Contractors' invoice, as revised by the Governments' receiving report, will be forwarded for processing within 7 days after receiving the invoice. The Contractor will be notified, within 7 days of the Government's receipt of the invoice, of the reasons for any changes to the invoice.

Delete paragraph (f) and substitute the following:

(f) Partial payments. Invoices may include the following:

(1) Progress payments may include partial payment for material to be incorporated in the work, provided the material meets the requirements of the contract and is delivered on, or near, the project site or stored in acceptable storage places.

Partial payment for material does not constitute acceptance of such material for use in completing items of work. Partial payments will not be made for living or perishable material until incorporated into the project.

(2) Partial payment for preparatory work. Partial payment for preparatory work does not constitute acceptance of work.

Individual and cumulative partial payments for preparatory work and material will not exceed the lesser of:

- 80 percent of the contract bid price for the item; or
- 100 percent of amount supported by copies of invoices submitted.

The quantity paid will not exceed the corresponding quantity estimated in the contract.

Submit pay notes according to Subsection 109.01. Provide a cost breakdown of the bid item components and submit invoices or other documents supporting the partial payment.

The CO may adjust partial payments as necessary to protect the Government.

109.09 Final Payment. Add the following after the first paragraph:

Payment for individual pay items will be based on the awarded unit price for each pay item according to the following table.

Decimal Accuracy of Quantities for Payment

Awarded unit price	Decimal Accuracy of Quantities for Payment
< \$1.00	0 decimals
≥ \$1.00 to < \$100.00	1 decimals
≥ \$100.00 to < \$1000.00	2 decimals
≥ \$1000.00	3 decimals

DIVISION 150 PROJECT REQUIREMENTS
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Section 151. — MOBILIZATION

09/17/18-FP14

Payment

151.03 Delete the text of this Subsection and substitute the following:

The accepted quantities will be paid at the task order price per unit of measurement for the Section 151 pay items listed in the bid schedule. Payment will be full compensation for the work prescribed in this Section. See Subsection 109.05.

Progress payments for mobilization by the lump sum will be paid as follows:

- (a) Bond premiums will be reimbursed according to FAR Clause 52.232-5 Payments Under Fixed-Price Construction Contracts, after receipt of the evidence of payment.
- (b) When 5 percent of the original task order amount is earned from pay items (not including mobilization), 50 percent of the mobilization item, or 5 percent of the original task order amount, whichever is less, will be paid.
- (c) When 10 percent of the original task order amount is earned from pay items (not including mobilization), 100 percent of the mobilization item, or 10 percent of the original task order amount, whichever is less, will be paid.
- (d) Any portion of the mobilization pay item exceeding 10 percent of the original task order amount will be paid after final acceptance.

Section 152. — CONSTRUCTION SURVEY AND STAKING

01/06/23–FP14

Description**152.01** Add the following:

The work also includes: providing, configuring, and maintaining Robotic Total Station (RTS) equipment, Global Positioning System (GPS) equipment, or both, for exclusive use by the CO when Automated Machine Guidance (AMG) methods are employed; and training the CO on the use of the provided equipment.

Construction survey methods are defined as follows:

(a) Automated Machine Guidance (AMG) method. Grading equipment controlled with robotic total station (RTS) technology, global positioning system (GPS) technology, or a combination of the two.

(b) Conventional survey methods. All other survey methods.

Construction Requirements**152.04 General.** Delete the text of this Subsection and substitute the following:

Conform to the following:

(a) Personnel. Provide a crew supervisor on the project whenever surveying and staking is in progress.

(b) Equipment. Furnish survey instruments and supporting equipment capable of achieving the specified tolerances.

Construction equipment controlled with AMG methods may be used in earthwork and the construction of subgrade; constructing subbase, base, and surface aggregate courses; or other construction operations when approved.

When AMG methods are used, furnish equipment, a robotic total station, data collector, reflectors, software and loaded Digital Terrain Models (DTM) model and data files for use in Government quality assurance inspection. Provide equipment that is the same make, model and version as used in the construction of the project. Update all software to the most current version available from the manufacturer. At all times, ensure that Data and DTM provided to the Government are the same versions that are used by the Contractor for construction of the project. Maintain all equipment in good working order and provide replacements to the CO due to breakdown, damage or theft within two working days. The CO will return all supplied equipment upon completion of the contract.

Special Contract Requirements

Project: WY FLAP TET TR200(1), Sagebrush Connector Pathway

Provide at least two separate 8-hour minimum training sessions on the use of the RTS equipment, GPS equipment, or both. Provide one of the two sessions within one week of delivery of the equipment to the site. Provide the second of the two classes upon request of the CO. Provide training on the project site by a manufacturer's representative or as approved by the CO.

(c) Material. Furnish acceptable tools and supplies of the type and quality suitable for highway survey work. Furnish stakes and hubs of sufficient length to provide a solid set in the ground with sufficient surface area above ground for necessary legible and durable markings.

Include staking activities in the construction schedule submitted according to Section 155. Include the dates and sequence of each staking activity.

At the preconstruction conference, submit a cost breakdown of the work included in the lump sum item for the purpose of making progress payments.

(d) Government set reference lines and points. The Government has set horizontal and vertical control points for the project. The location and identity of each control point are shown on the plans.

Before beginning construction, notify the CO of any missing control points or stakes. The Government will reestablish control points and stakes missing before the beginning of construction.

(e) Government furnished information. The Government will furnish the design data described below.

(1) Digital copies of the following data:

- (a)* Proposed horizontal alignments(s) and profile grade(s) in MicroStation (dgn) format and portable document format (pdf);
- (b)* Construction staking notes representing subgrade points at centerline, shoulder, and theoretical slope stake catch points in spreadsheet (.xls) format; and
- (c)* X, Y, Z coordinates representing subgrade and base layers at centerline and shoulder points in spreadsheet (.xls) format.
- (d)* Clearing limits (based on theoretical catch points) in portable document format (pdf); and
- (e)* Cross section plots in portable document format (pdf).

Perform additional conversions and calculations as necessary for convenient use of Government-furnished data. The Contractor is responsible for the accuracy of all information converted from the Government-furnished data. Provide immediate notification of apparent errors in the furnished data.

(f) Pre-survey meeting. Before surveying or staking, discuss and coordinate the following with the CO:

- (1) Surveying and staking methods;
- (2) Stake marking;
- (3) Grade control for courses of material;
- (4) Referencing;
- (5) Structure control;
- (6) Field staking data;
- (7) Localization of the GPS systems to the Government-established control points; and
- (8) Other procedures and controls necessary for the work.

Do not start work until staking or three-dimensional (3D) verification data for the affected work has been approved.

Preserve initial reference and control points. Notify the CO of missing control points or stakes at least 10 days before beginning construction. The Government will reestablish control points missing before the beginning of construction.

Acceptance of the construction staking does not relieve the Contractor of responsibility for correcting errors discovered during the work and for bearing additional costs associated with the error.

Maintain legibility of stake markings for the duration of the project or until notified in writing the stakes are no longer needed. Replace stakes if necessary to ensure markings are maintained.

Record survey and measurement field data in an approved format. Sample note formats are available as listed in Subsection 106.01. Submit as-staked data and corrections made to the Government-furnished survey data. Submit survey and measurement data at least weekly.

The construction survey and staking work may be spot-checked for accuracy, and unacceptable portions of work may be rejected. Resurvey rejected work, and correct work that is not within the tolerances specified in Table 152-1.

Remove and dispose of flagging, paint, lath, stakes, and other staking material after the project is complete.

Compute and furnish calculations supporting pay quantities. Measure quantities within the tolerances established by the CO according to Subsection 109.01.

Adjust pathway prism excavation quantities for volume changes resulting from slope stake variations. See Subsections 152.05(d) and 204.16(a)(1)(a).

152.05 Survey and Staking Requirements. Amend as follows:Add the following after the first paragraph:

When AMG methods are used, provide for exclusive Government use, all surveying equipment (such as robotic total station, GPS, data collectors, and reflectors), software, and data files necessary for Government quality assurance inspection of the grading work. Provide equipment of the same make, model and version being used to construct the project. Provide equipment at least two-weeks before starting work that relies on the equipment. Continuously ensure that data provided to the Government is the same version being used to construct the project. Maintain all equipment in good working order and provide replacements to the CO within two working days when breakdowns occur. The CO will return all supplied equipment upon project completion.

Provide two separate 8-hour training sessions on the use of the contractor-provided surveying equipment. Provide the first training session within one week after delivering equipment to the site. Provide the second training session upon request of the CO. Provide training on the project site by a manufacturers' representative or as approved by the CO.

Add the following to paragraph (c):

Do not take pathway cross-sections unless required for volume adjustments. See Subsections 152.03(d) and 204.16(a)(1)(a).

Payment**152.08** Delete the second paragraph and substitute the following:

Payment for lump sum items will be prorated based on the submitted cost breakdown for the work completed under this Section.

Section 153. — CONTRACTOR QUALITY CONTROL

04/02/21(3)– FP-14

Delete the text of this Section and substitute the following:

Description

153.01 This work consists of planning and implementing a construction quality process to ensure work conforms to the contract requirements. This work also includes quality control (QC) inspection and documentation, process control sampling and testing, obtaining samples for QC testing, and performing QC tests. See FAR Clause 52.246-12 Inspection of Construction.

Construction Requirements

153.02 Qualifications. Provide a QC manager (QCM) with at least three years' experience in areas of material testing, inspection, management, supervision, and QC.

153.03 Quality Control Plan (QCP).

(a) Personnel. Provide a QCM, on-project during work, with authority to stop non-compliant work, or work that results in non-compliance with contract requirements. Submit a letter, from a company officer or official with higher authority than the Superintendent, that authorizes the QCM to stop work.

Identify an alternate, meeting QCM qualifications, to act as QCM in the QCM's absence. Do not use an alternate as the QCM for more than 3 days unless approved by the CO.

At least 14 days before starting work, submit names and qualifications of the QCM, and any alternate being used on the project. Do not use QC personnel that have not been approved by the CO.

Provide a QCM (designated and alternates) that is exclusively dedicated to, and performs no duties other than, quality control management.

At the preconstruction conference, submit a cost breakdown of the individual items included in the lump sum item for use in making progress estimate payments.

(b) Development. At least 14-days before starting a work feature, develop and submit a QCP for each work feature listed below, to be approved by the CO. The absence of a plan does not relieve the Contractor of complying with the contract requirements. Additional QCPs, and/or activities, may be required to provide effective quality management. The CO may request a QCP for additional work features that are not listed below.

(1) Construction Survey and Staking (Section 152);

(2) Soil Erosion and Sediment Control (Section 157);

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- (3) Clearing and Grubbing (Section 201);
- (4) Excavation and Embankment (Section 204);
- (5) Riprap (Section 251);
- (6) Minor Crushed Aggregate (Section 302);
- (7) Aggregate Surface Course (Section 313);
- (8) Asphalt Concrete (Section 403);
- (9) Drainage Structures (Section 602);
- (10) Minor Structures (Sections 609, 615);
- (11) Topsoil (Section 624); and
- (12) Permanent Traffic Control (Sections 633, 634).

Provide a QCP for each work feature in a format approved by the CO.

Include process control sampling and testing in the QCP. Perform process control sampling and testing according to Subsection 153.05 and the QCP.

153.04 Prosecution of Work. Complete the following:

(a) Preparatory and Start-up Phase. Thoroughly address the following activities (1 through 3) for each work feature, and denote in the plan the person/position performing each activity.

(1) Check and verify that submittals, plans, and materials certifications meet contract requirements, then submit these documents at least 7 days before installation unless otherwise stated in the contract. Certify compliance by completing and signing Form WFLHD-87. An electronic version of the form is available at:

<https://highways.dot.gov/federal-lands/construction/forms-wfl>.

(2) Conduct pre-work meetings. Review contract requirements with the construction crew, foremen, and Government personnel before beginning work. Conduct additional pre-work meetings as necessary and when crew(s) change.

(3) Ensure construction methods will result in end-products meeting contract requirements.

Include the following in the plan for applicable work features:

(a) A brief narrative of how the work will be accomplished describing the methods, crews, and equipment.

(b) The process to ensure the completed feature of work conforms to contract requirements.

(c) The inspection and testing frequency to ensure the process remains valid or work is being performed according to the established process.

(d) The action(s) to be taken and alterations to the inspection and testing frequency, if inspection or testing reveals the work is not meeting contract requirements.

Revise QC plans when personnel, activities, or processes change or when deficiencies occur in the work.

(b) Implementation. Implement QC activities as described in the accepted plan. Do not begin a work feature until the plan is approved by the CO and a pre-work meeting (activity 2) is performed. In the QC Reports described below, document when each activity (1 through 3) was performed, and by whom.

(1) QC Reports. Report the results of QC inspections that verify the work meets contract requirements as QC activities are performed. Describe the results of reviews, inspections, measurements, and testing activities. Attach original support data and test results. Document QC pre-work meetings, and discussions with the construction staff and Government personnel. Document deficiencies found in the work and describe corrective actions, adjustments to frequency of QC activities, and method or process changes to correct and eliminate future deficiencies. Provide reports to the CO daily or as otherwise approved. Include the following certification signed by the QCM:

“I certify that the information contained in this record is accurate and that work documented herein complies with the contract. Exceptions to this certification are documented as a part of this record.”

(2) Notification of Completion of Work. Submit a completed “Notification of Completion of Work” (Form WFLHD 470) when the phase of work listed below is ready for inspection. An electronic version of WFLHD 470 is available at:

<https://highways.dot.gov/federal-lands/construction/forms-wfl>.

Allow 1 working day for the following work to be inspected.

(a) *Survey and staking (field stakes and notes).* Provide survey notes for the following

- (1) Control points – before disturbing original control points;
- (2) Clearing limits – before starting clearing and grubbing operations;
- (3) Slope stakes – before clearing operations or topsoil removal;
- (4) Subexcavation – after staking and prior to backfilling; and
- (5) Culverts – before starting installation.

(b) *Construction work.*

- (1) Erosion control devices – prior to any ground disturbing activities;
- (2) Sub grade – before placing pavement structure;
- (3) Any pavement structure layer requiring hubs – before placing next layer; and

(4) Structural excavation – before backfilling.

The CO may request submission of a form WFLHD 470 for work not specifically listed in this Subsection, or may not require a form for listed work.

153.05 Sampling and Testing. Perform process control sampling and testing according to the *Sampling, Testing, and Acceptance Requirements* table included at the end of each Section.

Perform QC sampling and testing as defined in the QCP.

Allow the CO the opportunity to witness all sampling and/or testing. When requested, sample and split QC samples according to AASHTO or other acceptable procedures. Immediately perform splits when required. Deliver and label split QC samples according to Subsection 154.03.

Provide the following documentation:

(a) Test Results. Label test results with the same information required by Subsection 154.03. Attach work sheets, used to determine test values, to the test result forms when submitted.

(b) Control Charts. Maintain linear control charts identifying project number and name; pay item number; test number; each test parameter; upper and/or lower specification limits applicable to each test parameter; and test results. Use control charts to document process variability; identify production and equipment problems; and identify potential pay factor adjustments. Correct processes when problems exist. Post charts at the Contractor's project testing lab and on site.

153.06 Acceptance. Contractor QC will be evaluated under Subsections 106.02 and 106.04 based on the demonstrated ability of the Contractor's QC system to ensure that work meets the contract requirements.

If Government testing and inspections (quality assurance) indicate the Contractor's QC system is ineffective or the plans are not being followed; make immediate improvements to correct inadequacies. Submit written notifications of improvements and modifications to the system.

A maximum of 10 percent of the total progress payment amount will be retained and affected project work may be stopped if a QCP is not accepted, the plan is not being followed, or work does not meet contract requirements.

Measurement

153.07 Measure the Section 153 items listed in the bid schedule according to Subsection 109.02.

Payment

153.08 The accepted quantities, measured as provided in Subsection 109.02 and above, will be paid at the contract price per unit of measurement for the Section 153 pay items listed in the bid

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schedule. Payment will be full compensation for the work prescribed in this Section. See Subsection 109.05.

Payment for the lump sum item will be prorated based on the work completed for this Section.

Section 154. — CONTRACTOR SAMPLING AND TESTING

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Construction Requirements

154.02 General. Add the following to the second paragraph:

Provide representative samples according to the individual Sections ordering the work.

154.03 Sampling. Add the following:

When samples are required at the Vancouver Laboratory, send to:

Material Section
Western Federal Lands Highway Division
610 East Fifth Street
Vancouver, Washington 98661

If samples are sent other than through normal delivery vendors, call 360-619-7747 or 360-619-7762 before delivery. Deliveries will be accepted from 7:00 a.m. to 2:30 p.m. PT (Monday through Friday).

Access to the Government complex is controlled; check-in is required at the main building entrance located on East 5th Street. Directions will be given for delivery of samples.

The sampling frequencies and reporting times are listed in the Sampling, Testing, and Acceptance Requirements tables included at the end of each Section.

Section 155. — SCHEDULES FOR CONSTRUCTION CONTRACTS

01/06/23(1)– FP-14

Delete this Section and substitute the following:

Description

155.01 This work consists of scheduling, monitoring, and reporting of all construction activities. Follow the requirements of FAR Clause 52.236-15, Schedules for Construction Contracts.

155.02 Definitions.

(a) Baseline Schedule. The initial schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the contract work.

(b) Critical Activity. An activity whose duration, if increased, will increase the time required to complete the project unless a schedule adjustment is made. These activities are activities on a schedule's critical path.

(c) Critical Path. The longest sequence of activities in the schedule that determines the projects duration.

(d) Critical Path Method (CPM) Schedule. A computer-generated time-scaled logic diagram showing: the sequence in which the contractor plans to perform the work; the interdependence of all activities and milestones; the work completed through the data date; and the remaining work necessary to complete the project.

(e) Data Date. The status reporting date upon which schedule updates (e.g., addition or deletion of activities, revised logic, updates to percent complete and remaining durations) are made. Scheduling software uses the data date to base its network calculations and is typically shown on the schedule as a vertical line separating the completed (as-built) work and scheduled (as-planned) work.

(f) Gantt Chart. A printout of the CPM schedule with columns on the left hand side of the page identifying activity ID, activity name/description, original duration, remaining duration, percent complete, start date, finish date, total float, and predecessors/successors along with horizontal bars on the right hand side of the page displaying both completed work activities and the planned work activities at any given point of time.

(g) Schedule Narrative. A written narrative describing how the contractor plans to organize and execute the work described in the contract and the rationale and assumptions that went into developing the schedule including labor, equipment, and materials to be used, anticipated production rates, and work calendars.

(h) Schedule Submittal. A submittal that includes the schedule, schedule narrative, and submittal log. A schedule submittal is required for the baseline schedule and each schedule update.

(i) Schedule Update. An update to the previous approved schedule submittal. A schedule update is provided on a monthly basis (or sooner if necessary) showing the completed work and the remaining work necessary to complete the project.

(j) Submittal Log. A log that tracks status of contract submittals.

Construction Requirements

155.03 General. Do not begin work associated with Section 151 *Mobilization* and limit construction activities according to Subsection 108.01 until the baseline schedule submittal is accepted by the CO.

Schedule approval does not relieve the Contractor of the responsibility to schedule the work in a practicable manner that meets the contract requirements. Failure to include elements of work in the schedule submittal required for performance of the contract, even if approved in a previous submittal, does not excuse the Contractor from being responsible for completion of all specified work by the contract's fixed completion date.

The CO may reject any schedule submittal with a projected completion date past the contract's fixed completion date. Approval of a schedule submittal with a projected completion date past the contract's fixed completion date does not excuse the Contractor from being responsible for completing the work by the contract's fixed completion date.

When a schedule is "Accepted as Noted", address such comments when preparing resubmittals or future schedule submittals, when appropriate.

Failure to receive approval of a prior schedule submittal does not relieve the Contractor of the responsibility to meet the requirement to provide each specified schedule update submittal.

155.04 Schedule Manager and Scheduling Software.

(a) Qualifications. Provide a schedule manager with a minimum of 5 years of construction scheduling experience. To be qualified, experience must demonstrate the person has supported active construction projects by preparing, evaluating, and actively managing construction schedules during 3 of the last 5 years including:

- (1) Projects of similar size and scheduling complexity; and
- (2) At least two highway or bridge type construction projects.

(b) Scheduling Personnel and Software. Provide a schedule manager responsible for preparing and managing the schedule submittals and the schedule submittal meetings. Within 7 days of Contract Award, unless otherwise approved by the CO, submit the following:

(1) The name and qualifications of the schedule manager for approval. Provide ONLY information that is applicable to the qualifications specified in Subsection 155.04(a). Documents that include unrelated or non-relevant information will not be accepted.

(2) The name of the scheduling software to be used along with version number (if any).

Do not designate the project superintendent, QC manager, foreman, or traffic control supervisor as the schedule manager.

155.05 Preliminary Work Plan. No preliminary work plan is required.

155.06 Schedule Submittal. The Schedule Submittal includes the Schedule, Schedule Narrative, Submittal Log, and Certification.

(a) Due date. The baseline schedule submittal is due within 25 days of Contract Award.

Monthly schedule submittals are due within 7 days following the closing date for progress estimates established in accordance with Subsection 109.08.

Resubmittal of rejected schedule submittals are due within 3 days of the rejected date unless otherwise approved by the CO.

When no schedule meeting is held, the schedule (re)submittals will be approved or rejected within 14 days of receipt. When a schedule meeting is held, the schedule submittal with updates resulting from the meeting will be approved or rejected within 7 days of receipt.

(b) Prepare schedule submittals according to Subsection 103.06. Include the following:

(1) Title page with contract information; Contractor name; current fixed completion date; date of submittal; name of submittal; progress estimate number; submittal number, and task order number.

(2) Native schedule file. An electronic copy of the schedule's native file that is fully compatible with Bentley Synchro Pro Scheduler (free 2D Version). The native file must be provided in .xml format and/or be capable of being imported into Synchro using Synchro's import feature without the need of installing other scheduling software on the computer. Some versions of Microsoft Project (.xml), Primavera P6 (.xml), PMA NetPoint, Safran Project, Microsoft Excel, and ProjectWise Project may be compatible with Synchro. Verify compatibility with Synchro prior to use.

(3) Gantt chart schedule printouts with critical path identified in .pdf format, fit to 11 by 17-inch paper, with no more than 40 activities per page unless otherwise stated below. Provide each of the following unique printed charts:

(a) Chart of the current schedule's activities, grouped by area and sorted by start date.

(b) Chart of all incomplete activities in the current schedule as of the data date, sorted by area and then by early start date.

(c) Chart comparing the current schedule with the last approved schedule. Include two horizontal bars for each activity (one bar for the current schedule and one bar for the previously approved schedule). Include Gantt chart columns with early start and finish dates and actual start and finish dates for the current schedule. Group activities by area, sorted by start date, with no more than 20 activities per page. Some scheduling software may refer to this as a baseline comparison or setting a baseline, but the scheduling software terminology is referring to the earlier of the two comparison schedules and is not to be confused with the contract definition of the baseline schedule.

(4) Schedule Narrative.

(5) Submittal log current as of the data date.

(6) Certifications.

(a) Schedule Certification. Each of the contractor personnel having a primary role in developing the construction schedule, scheduling work activities, and/or managing the project shall certify the schedule as follows:

“By signature below, I certify this schedule submittal accurately reflects the contractor’s plans for constructing the project.”

Unless otherwise approved by the CO, a certification by each of the following are required: the schedule manager, project manager, and project superintendent.

(b) Subcontractor Certification. The project manager responsible for scheduling subcontractor work shall certify the following when any subcontractor is performing work on scheduled critical path activities:

“By signature below, I certify each subcontractor responsible for work associated with critical path activities has reviewed the schedule submittal and agreed the schedule accurately reflects the Subcontractor’s schedule for completing the work.”

(c) Time Impact Analyses. For the purpose of performing time impact analyses in Subsection 108.03, use the schedule submittal with a data date matching the closing date for the progress estimate just prior to the CO being notified of the change.

155.07 Schedule. Schedule work in a practicable manner that meets the contract requirements.

(a) Develop CPM schedule. Include the following:

(1) Include all activities that are required to complete the contract. Begin with the award date and conclude with the project completion date milestone. In the baseline schedule, constrain the project completion date to finish on or before the Fixed Completion Date identified in FAR Clause 52.211-10 Commencement, Prosecution, and Completion of Work;

(2) Activity IDs;

- (3)** Activity names and descriptions. Relate activities or groups of activities to the task order pay item number or specification section when no pay item is applicable. Include activities for submittals, submittal reviews, fabrication periods, and deliveries;
- (4)** Show the activity name or description with the activity bar on the diagram;
- (5)** Activities grouped by area (e.g., distinct roadway sections, bridges, and separate repair sites) and by type of work (e.g., distinct and unique features such as walls, submittals, and utilities);
- (6)** Original and remaining durations of construction activities with construction activities broken into subtasks so that no activity duration exceeds 20 working days unless otherwise approved by the CO. Break longer activities into two or more activities and distinguish locations by station or other unique identifier included in the contract plans or specifications;
- (7)** Original and remaining durations of non-construction activities. Non-construction activities include: mobilization, shop drawings and sample source testing submittals by task order pay item number or specification section when no pay item is applicable, the fabrication and delivery of key materials, and government review times of submittals and shop drawings, unless otherwise approved by the CO. Non-construction activities may have durations exceeding 20 working days;
- (8)** Activity percent complete;
- (9)** Early, late and actual start and finish dates;
- (10)** Activity relationships. Each activity must have at least one predecessor and one successor activity, except for the award and planned completion date;
- (11)** Data date. For the baseline schedule, set the data date to the award date. For schedule updates, set the data date to the estimate closing date established in accordance with Subsection 109.08;
- (12)** Lags and leads. Whenever possible, show lags or leads as individual activities. Obtain approval, in writing, by the CO prior to using lag or lead settings within the program. The CO may reject any lag or lead settings within the program, regardless of whether they were allowed on a previous schedule;
- (13)** Subcontractor names or codes (if applicable);
- (14)** Calendars. Use the scheduling software's calendar function to model hourly work schedules, work days, weekends, holidays, environmental restrictions (e.g., fish windows), other contract schedule restrictions, and winter shutdowns; and
- (15)** Incorporate changes to activities that are the result of executed contract modifications.

(b) Requests to exclude activities from the schedule. Activities for continuous, non-critical items such as flagging, temporary traffic control, and quality control may be excluded from the schedule.

Activities that are considered an integral part of other scheduled activities may be excluded from the schedule by certifying the completion of the activities will not have an effect on the critical path, but only with prior written approval of the CO. If approved, include a list of these activities in the schedule narrative along with the following certification:

“By excluding the activities listed above from the schedule, the Contractor certifies that work associated with these pay items or activities will have no effect on the critical path activities and the Contractor will not submit, or request consideration of their affects when performing time impact analyses associated with this contract.”

(c) Do not suppress or sequester float. The contractor’s planned durations, sequencing, etc. may not be altered to give the appearance that activities do not have float. Float shown within the schedule is not for sole use or benefit of either party, but is a jointly owned resource available to both parties as needed to meet the completion date established in the contract. Either party has the full use of float until it is depleted. Suppressing float to create multiple critical paths is prohibited.

(d) Schedule acceleration or recoveries. The contractor has the right to accelerate activities within the schedule to recover its own delays when adequately supported in the schedule narrative (e.g., increased number of shifts, overtime operations, days of work, increased equipment and labor). Any acceleration is subject to limits included in the contract.

155.08 Schedule Narrative. Prepare a written narrative describing how the contractor plans to organize and execute the work described in the contract and the rationale and assumptions that went into developing the schedule. Refer to specific activities by activity ID and activity name/description. Ensure there are no conflicts between the schedule and schedule narrative.

(a) For the schedule narrative provided with the baseline schedule submittal:

(1) Describe the planned critical path(s) and the general sequence of work;

(2) For all activities excluding mobilization and submittals, describe:

(a) Scope of work;

(b) Locations (e.g., station numbers);

(c) Resource loading planned to perform the work. Include manpower allocation by types of labor and crew size, types and number of equipment and special equipment, materials, materials source locations; and

(d) Basis for calculating the duration for each activity stated as quantity production rates (such as quantity of excavation per day), in the same units as the pay item quantity unless otherwise approved in writing by the CO.

For individual activities divided into multiple segments, the resource loading and production rates can be stated once in the narrative if they are similar, provided all of the locations are noted and the planned duration at all locations is reasonably supported by the planned resource loading and production rate;

(3) Describe the general work schedule including workdays per week, number of shifts per day, and number of hours per shift;

(4) Describe the assumptions used to establish calendars within the scheduling software. Include anticipated non-workdays, holidays, environmental restrictions, other constraints within the contract, and winter shutdowns. Include assumptions and allowances made for inclement weather. Describe all calendars used in the schedule and list the calendar used for each activity in the schedule;

(5) Identify the subcontractor or supplier performing an activity and identify their activity codes used on the schedule diagram once known. If a supplier or subcontractor has not yet been secured, indicate activities that will be completed by a supplier or subcontractor and state assumptions used to develop the schedule activities;

(6) Describe site mobilization as well as expected and critical delivery dates for equipment or material that may affect completion of the project;

(7) Describe organizational limitations (such as resource constraints or subcontractor commitments) that may limit scheduling flexibility; and

(8) Provide a list and description of constraints used within the scheduling software.

(b) For schedule narratives provided with the schedule submittal updates, limit content to progress updates and changes that have occurred since the last approved schedule narrative. Include the following:

(1) Describe the progress of work. If progress is less than planned, explain why and explain what, if any, modifications will be made to meet the Fixed Completion Date.

(2) Document all changes and updates related to production rates; durations; calendar or work shift adjustments; labor, material, and equipment availability; suppliers and subcontractors; and schedule logic. Document all changes made within the schedule software and the reason for each change. Calculated outputs from the scheduling software (e.g., revised float values or planned activity start and finish dates) do not need to be documented in the schedule narrative.

(3) Document all new activities inserted into the schedule and discuss the source(s) of, or reasons for, each new activities. Provide all information required in Subsection 155.08 related to each new activity.

(4) If critical activities on the schedule update are different from those shown on the previously approved schedule, discuss source(s) of, or reasons for, the change(s).

(5) Document any critical path delays, discuss the source(s) of and reasons for the critical path delays.

(6) Document any planned schedule recoveries or acceleration, discuss the plan for achieving the schedule recovery (e.g., increased number of shifts, overtime operations, equipment and labor, etc.) and why they are necessary.

155.09 Submittal Log. Prepare a submittal log that lists all contract documents and submittals requiring approval in a format approved by the CO.

Include at a minimum columns for submittal number; section or item number; submittal description; date submitted; due by date; approval date; and comments.

Update the log as submittals are submitted and approved. Provide a copy of the log with each progress estimate and as requested by the CO.

155.10 Scheduling Meetings. The CO may reject the schedule submittal prior to holding any scheduling meeting.

Hold a baseline schedule meeting a minimum of 14 days after the (re)submittal date unless an earlier date is approved by the CO. Plan for the baseline schedule meeting to last 8 hours.

Monthly scheduling meetings may be requested by either party. When requested, hold scheduling meetings within 14 days of the (re)submittal date unless a later date is agreed upon. Plan for the schedule submittal meetings to last for at least 2 hours.

Scheduling meeting format:

(a) The schedule manager, project manager, and superintendent are required to attend, unless otherwise approved by the CO.

(b) Provide meetings capable of being attended virtually with audio, face-to-face video, and screen sharing that will allow Contractor and Government attendees to view and participate in discussions whether in person or attending virtually. Verify virtual capabilities with the CO at least 3 days in advance of the baseline schedule meeting.

(c) With the scheduling software, interactively review the schedule for conformance with the contract requirements. Also review and discuss software settings and calendars. Make immediate corrections if errors or omissions are discovered. For corrections that will take further consideration or more time than allowed in the meeting, the CO may approve adding a comment within the schedule and delaying the correction until after the meeting.

Regardless of whether the schedule is in final format, provide a Synchro compatible native file with all revisions made during the meeting to the CO at the conclusion of the meeting.

(d) Interactively review the schedule narrative and submittals list. Document any necessary corrections or revisions.

(e) If revisions are required, within 3 days of the meeting, unless a later date is approved by the CO, resubmit the schedule submittal with revisions based on meeting discussions.

(f) Within 3 days of the meeting, unless a later date is approved by the CO, submit a draft of the meeting minutes with a log of all changes made to the schedule during the meeting. Resubmit a final version of the meeting minutes certified by the schedule manager, project manager, and superintendent within 3 days of being returned unless a later date is approved by the CO.

155.11 Lookahead Schedules. At the end of each week, provide a look-ahead schedule listing all planned work activities for the next 2 to 3 weeks and the days the activities will be performed. Provide lookahead schedules in the form of a spreadsheet, table or printout from the scheduling software in a format as approved by the CO. The CO may request weekly meetings to review actual progress and planned activities shown in the look-ahead schedule.

155.12 Contractor's Daily Record of Construction Operations. For each day of work, submit a completed Form WFLHD 465 Contractor's Daily Record of Construction Operations (CDR) or an approved alternate form within one day of the work being performed. Report operations of work separately, with manpower and equipment assigned to each operation separately. Document inspection results, including deficiencies observed and corrective actions taken. Complete a CDR for each contractor and subcontractor working each shift. CDR's will be approved or rejected by the CO. Correct rejected CDRs and resubmit the revised CDR within 24 hours.

Certify each CDR with the following statement signed by the person responsible for the construction operation:

"I certify that the information contained in this record is accurate, and that all work documented herein complies with the requirements of the contract. Any exceptions to this certification are documented as a part of this record."

Electronic versions of the form are available at:

<https://highways.dot.gov/federal-lands/construction/forms-wfl>

155.13 Acceptance. Schedule submittals and preliminary work plans will be evaluated under Subsection 106.02.

Meeting minutes will be evaluated under Subsection 106.02.

CDR's will be evaluated under Subsections 106.02 and 106.03.

Measurement

155.14 Measure the Section 155 items listed in the bid schedule according to Subsection 109.02.

Payment

155.15 The accepted quantities measured according to Subsection 109.02, will be paid at the contract price per unit of measurement for the Section 155 pay item listed in the bid schedule. Payment will be full compensation for the work prescribed in this Section. See Subsection 109.05.

Progress payments for Section 155 lump sum pay item will be paid as follows:

- (a) 25 percent of the item amount, not to exceed 0.5 percent of the original contract amount, will be paid after the baseline schedule submittal is approved; and
- (b) Payment of the remaining portion of the lump sum will be prorated based on the estimated number of monthly schedule submittals (i.e., months from Mobilization to fixed completion date). Prorated amount will be paid upon acceptance of each monthly schedule submittal and look ahead schedules for that month.

No progress payment will be made until the Schedule Manager and baseline schedule submittal are approved.

A mandatory 10 percent withholding of the entire progress payment will be applied if the latest schedule submittal has not been received by the due date or the previous schedule submittal has not been approved. Progress payment withholdings will not be released until the submittal(s) and approval of the submittal(s) are current.

Payments made for work under this specification do not affect any rights the government may have because of failure to meet the project schedules for construction requirements.

Section 156. — PUBLIC TRAFFIC

01/06/23— FP14

Construction Requirements**156.04 Accommodating Traffic During Work.** Add the following:

Allow emergency vehicles to pass through the project area without delay. The Park dispatcher will coordinate emergency vehicle needs directly with the Traffic Control Supervisor by radio. Maintain radio contact during traffic-delaying work. The Park will provide an NPS radio and training session to the Contractor's Traffic Control Supervisor for this purpose.

Accommodate public traffic as follows:

- (a) Road closures are not allowed.
- (b) Use temporary stabilized construction exit locations as shown in the plans such that no more than 1 entrance requires the use of flaggers at any one time.
- (c) Do not delay traffic on weekends unless approved in writing by the CO according to Subsection 108.01(a)(3).
- (d) Close turnouts approved for staging and storage according to Subsection 105.04.
- (e) Adjust operations to stagger traffic through one-lane sections so that traffic is not stopped in both lanes, unless approved by the CO.
- (f) Maintain 5-foot wide, hardened surface access for pedestrians or dismounted cyclists from Sagebrush Drive to existing pathway at project termini (approx. Station 800+60 and Station 845+25).
- (g) Provide temporary plastic fence, securely supported with metal tee posts, or other means approved by the CO to separate public access from active construction areas.

156.07 Limitations on Construction Operations. Amend as follows:

Delete paragraph (g) and substitute the following:

- (g) Provide two-way radio communications between Traffic Control Supervisor and flaggers. Provide two-way radio communications between flaggers, unless flaggers can see each other and communicate. Citizen band radios are not acceptable. Make radio equipment available to the CO.

Delete paragraph (i) and substitute the following:

- (i) limit construction-caused delays to public traffic to a maximum of 15 minutes per passage through the project

Special Contract Requirements

Project: WY FLAP TET TR200(1), Sagebrush Connector Pathway

Add the following:

(k) Do not perform construction operations that cause delays or otherwise interferes with public traffic during the following dates and times.

(1) From 6:00 p.m. Friday through 8:00 a.m. Monday, unless approved by the CO.

156.09 Traffic Control Supervisor. Amend as follows:

Delete the first two sentences and substitute the following:

The superintendent may be designated as the traffic control supervisor.

Add the following:

(l) Transport personnel, construction signs, barricades, drums, cones, tubular markers, and other traffic control devices.

Section 157. — SOIL EROSION AND SEDIMENT CONTROL

01/06/23 (6)– FP-14

Description**157.01 Add the following:**

This work also includes the placement and subsequent removal of soil erosion control stabilized construction exit devices.

157.05 Controls and Limitations on Work. Delete the text of this Subsection and substitute the following:

- (a) Temporary erosion controls will be in place prior to any significant alteration of the action site and will be removed once the site has been stabilized following construction activities.
- (b) Install all sediment perimeter control measures prior to clearing, grubbing, and grading activities. Install additional erosion and sediment control measures as needed during construction.
- (c) Before conducting land clearing and disturbance, mark all clearing limits in the field. Mark trees, wetlands, sensitive areas, and buffer zones for preservation as shown on the plans. Preserve existing vegetation wherever possible.
- (d) Stabilize and maintain construction access points between unpaved and paved sites to minimize tracking of mud and dirt onto public roads.
- (e) Phase construction activities to minimize the amount and duration of soil exposed to erosion. Establish final grade as soon as practicable and apply temporary or permanent soil stabilization measures. Limit the combined grubbing, grading, excavating, borrow, and fill within the construction limits to 5 acres (2.0 hectares) of exposed soil at one time.
- (f) Divert runoff around exposed soils.
- (g) Commence temporary or permanent soil stabilization measures immediately if no further disturbance of an area of the site or stockpile is expected within the next 14 days. Complete installation of temporary soil stabilization measures to disturbed sites or stockpiles within 14 days and installation of permanent soil stabilization measures within 14 days of last disturbance. Provide for temporary stabilization of all exposed soil prior to winter construction shut down.
- (h) Construct and maintain perimeter protection and locate erodible stockpiles away from storm drain inlets, waterways, and drainage channels.
- (i) Handle and dispose of all pollutants, including construction materials, waste materials, and construction debris, in a manner that does not cause contamination of storm water.

(j) Apply fertilizers and other chemicals in a manner and at application rates that will not result in loss of chemicals to storm water runoff. Follow manufacturers label requirements except as otherwise required by the contract.

(k) Do not discharge concrete wastewater near or into waterways or wetlands. Submit proposed washout areas to the CO for approval.

157.06 Filter Barriers. Add the following:

Place fiber rolls in a shallow trench the depth of which will be $\frac{1}{3}$ the diameter of the log. Secure every 2 linear feet across the length of the log with a 24 inch wooden 1 inch by 1 inch (or larger stakes) driven a minimum of 14 inches from backfilled grade or 10 inches from the bottom of the wattle, into the ground.. Wooden stakes that are severely split will not be accepted.

Install uniformly over the entire area at 10 to 20 foot intervals (as directed by the CO perpendicular to the contour, in a staggered overlapping pattern so that an unnatural pattern cannot be detected. Install 20 foot (in length) slope interruption devices with 10 foot interval spacing, parallel to the contour. All installation will ensure that the slopes are adequately protected from sheet and rill erosion.

157.15 Maintenance and Cleanup. Delete this Subsection and substitute the following:

Maintain the functionality of erosion and sediment control measures, and clean measures that are one-third full of sediment, until final acceptance or until disturbed sites are stabilized according to the CO. Remove and dispose accumulated sediment according to Subsection 204.14.

Implement maintenance of erosion and sediment control devices or other corrective action within the following time requirements:

(a) In the event of discharge of sediment or other pollutants, immediately take steps to prevent further discharge until a permanent solution is installed and made operational; and

(b) Begin corrective maintenance of sediment and erosion control devices immediately and complete within 24 hours of discovery, or as soon as field conditions allow access.

Upon approval of the CO, remove and dispose of erosion and sediment control devices and structures according to Subsection 203.05. Restore the ground to its natural or intended condition and provide permanent erosion control measures.

157.16 Acceptance. Delete the text of the first paragraph and substitute the following:

Material for erosion and sediment control measures will be evaluated under Subsections 106.02 and 106.03. Do not provide a copy of the certifications for erosion and sediment control materials to the CO, unless otherwise directed by the CO.

Section 158. — WATERING FOR DUST CONTROL**Construction Requirements****158.03 General.** Add the following:

The plan does not show estimate quantities for water lump sum pay item. At the preconstruction conference, submit a dust control plan including locations, water quantity, application rates and frequencies. Obtain the CO written approval before beginning work.

Payment**158.06** Add the following:

Payment for the lump sum item will be prorated based on the work completed for this Section.

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DIVISION 200 EARTHWORK

Section 201. — CLEARING AND GRUBBING

01/01/14– FP-14

Construction Requirements

201.03. General. Delete the last sentence of the second paragraph.

201.04. Clearing. Amend as follows:

Delete the text of paragraph (c) and substitute the following:

(c) In areas outside the excavation, embankment, and slope rounding limits, cut stumps to ground level;

Delete the last sentence of paragraph (d).

Add the following:

(e) Install temporary construction fence to protect vegetation and critical root zones designated to remain as directed by the CO;

(f) Do not damage vegetation outside the clearing limits or within fenced areas. Do not fasten ropes, cables, or guy wires to trees. Protect tree roots from damage. Keep exposed roots moist until covered with soil. Do not remove tree roots unless approved by the CO. If protected vegetation is damaged or destroyed, pay the damages at \$5/square foot, or any combination as determined by the CO; and

(g) If vegetation to remain between the slope stake limits and the clearing limits is compacted as determined by the CO, use equipment to rip compacted areas as approved by the CO.

Measurement

201.08 Delete the second paragraph and substitute the following:

Where the new construction follows the existing road, exclude that portion of the old roadbed within the clearing and grubbing limits from the measurement width. Also exclude the area of any body of water and non-vegetated portions of its shoreline within the clearing and grubbing limits.

Special Contract Requirements

Project: WY FLAP TET TR200(1), SAGEBRUSH CONNECTOR PATHWAY

Section 203. — REMOVAL OF STRUCTURES AND OBSTRUCTIONS

Construction Requirements

203.04 Removing Material. Add the following:

Remove boulders at Sagebrush parking area to Kelly Pit as directed by the CO.

203.05 Disposing of Material. Amend as follows:

Delete the text of paragraph (b) and substitute the following:

(b) Burn. No burning will be allowed within the Park boundaries.

Add the following to the first paragraph of paragraph (c):

(c) Bury. Bury native origin material only. Do not bury concrete, metal, construction debris or other non-native material.

Measurement

203.07 Add the following:

Do not measure sawcutting for payment.

Section 204. — EXCAVATION AND EMBANKMENT

11/12/20– FP-14

Material

204.03 Add the following to the material list:

Geotextile	714.01
Stabilization geogrid	714.03

Construction Requirements

204.04 Preparation for Roadway Excavation and Embankment. Add the following:

Wheel or saw cut the existing pavement vertically to provide a neat match line before excavation.

204.07 Subexcavation. Add the following:

Install geotextile as shown on the plans and in accordance with Section 207.

204.11(c) **Less than 50 percent retained on a No. 4 (4.75-millimeter) sieve.** Delete the third paragraph and substitute the following:

Use compression-type or vibratory rollers. Compact each layer of material full width to at least 95 percent of the maximum density. Determine the in-place density and moisture content according to AASHTO T 310 or other approved test procedures.

204.13 Sloping, Shaping, and Finishing. Delete paragraph (d) and substitute the following:

(d) Finishing. Remove material larger than 6 inches (150 millimeters) from the top 6 inches (150 millimeters) of the roadbed. Remove unsuitable material from the roadbed, and replace it with suitable material.

(1) AMG method. Finish roadbeds that are compacted according to Subsections 204.11(b) and (c) to within ± 0.05 foot (± 15 millimeters) of the design line and grade. Finish roadbeds that are compacted according to Subsection 204.11(a) to within ± 0.10 foot (± 30 millimeters) of the design line and grade. Finish ditch cross-sections to within ± 0.10 foot (± 30 millimeters) of the design line and grade. Maintain proper ditch drainage.

(2) Conventional survey method. Finish roadbeds that are compacted according to Subsections 204.11(b) and (c) to within ± 0.05 foot (± 15 millimeters) of the staked line and grade. Finish roadbeds that are compacted according to Subsection 204.11(a) to within ± 0.10 foot (± 30 millimeters) of the staked line and grade. Finish ditch cross-sections to within ± 0.10 foot (± 30 millimeters) of the staked line and grade. Maintain proper ditch drainage.

Special Contract Requirements

Project: WY FLAP TET TR200(1), Sagebrush Connector Pathway

Measurement

204.14 Disposal of Unsuitable or Excess Material. Add the following:

Stockpile excess conserved topsoil at the Kelly Staging Area per Subsection 105.04(c), and as directed by the CO.

204.16 Amend as follows:

Add the following to paragraph (a)(1)(a):

Use the design volume. The design volume is defined as the bid schedule quantity less any allowance, as shown in the summary of quantities sheet of the plans. This volume is subject to adjustments resulting from changes to slope stakes according to Subsection 152.05(d).

Add the following:

Do not measure T-posts for payment.

Do not measure geotextile or stabilization geogrid for payment

204.16(b) Unclassified borrow, select borrow, and topping. Delete the text of the first paragraph and substitute the following:

When measuring by the cubic yard, measure in-place.

Payment

204.17 Add the following:

Geotextile and stabilization geogrid is incidental to the pay item.

Section 207. — EARTHWORK GEOSYNTHETICS**Measurement**

207.09 Delete the text of this Subsection and add the following:

Do not measure geotextile for payment.

Section 211. — ROADWAY OBLITERATION

Description

211.01 Amend as follows:

Add the following to paragraph (a):

Rip subsoil a minimum of 18 inches. Adjust slopes in the horizontal and vertical planes to blend into existing, adjacent natural ground. Apply conserved topsoil according to Subsection 624.04, to a depth as shown on the plans, on finished slopes according to Section 624.

Delete paragraph (b).

Construction Requirements

211.02 Delete the text of this Subsection and substitute the following:

Construct erosion control devices according to Section 157.

Conform to the following when obliterating or closing roadways and pathway:

(a) Rigid material.

(1) Nonasphalt material. Break concrete pavements, curbs, gutters, sidewalks, and other nonasphalt rigid material into pieces and dispose of it according to Subsection 203.05(a).

(2) Asphalt material. Dispose of asphalt material in a manner consistent with state and local regulations. Asphalt material may be considered hazardous waste. Submit copies of the disposal permits.

(b) Nonrigid Material.

(1) Nonasphalt material. Scarify or rip the gravel, crushed stone, or other nonrigid surface, base, and subbase material and dispose of according to Subsection 203.05(a). Do not mix with underlying soils. Scarify soils from sites where pavement has been removed to a depth of 18 inches.

DIVISION 250 SLOPE REINFORCEMENT AND RETAINING WALLS

Section 251. — RIPRAP

11/05/15– FP-14

Description

251.01 Add the following:

This work includes removing and resetting landscaping boulders and installing boulders embedded in concrete surface according to Section 615. This work also includes installing government provided riprap.

Material

251.02 Amend as follows:

Add the following:

Epoxy	725.21
Ring Bolts	725.20
Sealants, Fillers and Seals	712.01
Select Borrow	704.07

Construction Requirements

251.03 General. Add the following:

All boulders and riprap are government furnished.

251.04 Placed Riprap. Add the following:

Mix uniformly 65 percent riprap by volume with 35 percent select borrow by volume prior to placement. Place riprap-soil mix to result in securely interlocked rock at the design thickness and grade. Compact and level to eliminate all voids and rocks projecting above design riprap top grade. Provide 12 inches of topsoil according to Subsection 624.04 on the riprap top grade.

Special Contract Requirements

Project: WY FLAP TET TR200(1), SAGEBRUSH CONNECTOR PATHWAY

251.06A Boulders. (Added Subsection).

(a) Boulders (Bike Rack, Government Furnished). Three boulders are designated as boulder bike racks. Notify the CO 3 days prior to selecting the boulders from Kelly Staging Area or Beaver Creek Pit. Once the boulders for use have been selected, notify the CO for approval. Use the riprap stockpiled at Kelly Staging Area or Beaver Creek Pit for the selection of the boulders. Store boulders individually.

CO will stake Boulder locations.

Install boulders furnished by the government. Minimum boulder sizes are 42 inches by 26.5 inches and maximum boulder sizes are 48 inches by 32 inches. Use sound, durable boulders that are resistant to weathering and water action. Do not use boulders with seams that may break into smaller pieces in the process of handling and placing.

Set boulders designated for the use of bike racks in concrete surface to the desired orientation, ensuring firm placement with no rocking or movement within the designated area as directed by the CO. Orient the bike rack boulders to provide a flat surface at the bicycle lock-up location(s) as directed by CO. Install a galvanized, drop forged ring bolt with secondary lock-up ring as shown in the plans. Submit epoxy material according to Section 725 for approval by the CO. Provide expansion joint filler around all boulders when set in concrete. Submit joint filler material according to Section 712 for approval by the CO. Construct surfacing layers around the boulder according to Section 615.

Clean the boulders through light brooming or other approved methods to remove soil material. Preform final cleaning of boulder after concrete has cured. Do not stain or otherwise damage the boulders.

(b) Remove and Reset Boulder. Install boulders in a landscape application as designated on the plans. Clean the boulders through light brooming or other approved methods to remove soil material. Do not stain, mark, or otherwise damage the boulders.

Reset boulders according to plan location as directed by CO.

251.07 Acceptance. Add the following:

Placement of Boulder Bike Rack will be evaluated under Subsections 106.02 and 106.04.

251.08 Measurement. Amend as follows:

Add the following:

Do not measure excavation, backfill, and select borrow for payment in the installation of placed riprap.

DIVISION 300 AGGREGATE AND BASE COURSES
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Section 313. — AGGREGATE-TOPSOIL COURSE

08/01/14– FP-14

Description

313.01 Delete the text of this Subsection and substitute the following:

This work consists of furnishing and placing an aggregate and conserved topsoil mixture on a prepared shoulder or other surface.

Material

313.02 Delete the text of this Subsection and substitute the following:

Conform to the following Subsection:

Crushed Aggregate	703.06
Conserved Topsoil	713.01
Water	725.01(c)

Construction Requirements

313.04 Mixing, Placing, and Compacting. Delete the text of this Subsection and substitute the following:

Furnish a mixture of 50±10 percent aggregate and 50±10 percent topsoil by volume with sufficient water for compaction.

Mix the components into a uniform mixture. Spread the mixture on the prepared surface in a uniform layer. Shape the mixture to the line, grade, and cross-section. Remove clods and stones greater than 2 inches (50 millimeters) in diameter.

Uniformly compact the mixture to ensure that it does not exhibit heaving, pumping, rutting, or shearing. Compaction tests may be waived by the CO if acceptable compaction is demonstrated.

Remove all material from the pavement surface upon completion.

Conserved topsoil may be used for the production of aggregate-topsoil course according to Subsection 624.04.

Special Contract Requirements

Project: WY FLAP TET TR200(1), SAGEBRUSH CONNECTOR PATHWAY

313.05 Acceptance. Delete the text of this Subsection and substitute the following:

Crushed aggregate will be evaluated under Subsections 106.02 and 106.03

Topsoil will be evaluated under Subsections 106.02 and 106.03.

Construction of aggregate-topsoil course will be evaluated under Subsection 106.02.

<p>DIVISION 400 ASPHALT PAVEMENTS AND SURFACE TREATMENTS</p>

Section 403. — ASPHALT CONCRETE

11/05/15– FP-14

Construction Requirements

403.01. Delete the second paragraph.

403.02. Delete this subsection and substitute the following:

(a) Type I. Conform to current state department of transportation material specifications for asphalt concrete.

Submit a state department of transportation JMF approved within the past 12 months for approval at least 30 days before production that meets the current state department of transportation requirements for the location and type of facility being constructed.

For each proposed JMF, submit a production certification conforming to state department of transportation specifications. Submit the strength, quality, and gradation specifications for the asphalt concrete mix. Include copies of laboratory test reports that demonstrate aggregate, asphalt binder, additive, and mix properties meet state department of transportation specifications. Submit the maximum specific gravity (density) of the mix as determined by AASHTO T 209.

Asphalt binder is designated according to AASHTO M 320.

Asphalt binder grade for this project is PG 58-34.

Delete Table 403-1.

403.12 Acceptance. Delete Table 403-2 and substitute the following:

Material or Product (Subsection)	Type of Acceptance (Subsection)	Characteristic	Test Methods Specifications	Sampling Frequency	Point of Sampling	Split Sample	Reporting Time	Remarks
Production								
Asphalt concrete, Type I (403.02(a))	Measured and tested for conformance (106.04)	Density	ASTM D 2950	1 per 500 feet (150 meters)	In-place after compacting	No	24 hours	–
		Surface tolerance	Straightedge measurement, Subsection 403.11	Continuously, after compaction	Finished pavement surface	"	"	–
		Placement temperature	–	First load and as determined by CO thereafter	Hauling vehicle before dumping, or windrow before pickup	"	Upon completion of measurement	–
	Process control (153.03)	Gradation at the plant Moisture content of aggregates Density	AASHTO T 27 & T 11 AASHTO T 255 ASTM D 2950	Contractor determined " 1 per 500 feet (150 meters)	Cold feed or hot bins as applicable Stockpile In-place after compacting	" " "	24 hours " "	–
Asphalt concrete, Type II (403.02(b))	Measured and tested for conformance (106.04)	"	"	3 per 700 Tons (650 metric tons)	In-place after compacting	"	"	–

Special Contract Requirements

Project: WY FLAP TET TR200(1), Sagebrush Connector Pathway

DIVISION 550 RIGID PAVEMENTS

Section 552. — STRUCTURAL CONCRETE

11/08/21-FP14

Construction Requirements

552.14(c)(4) Exposed aggregate finish. Delete the third paragraph and substitute the following:

To obtain aggregate exposure, use a water spray attachment on a special exposed aggregate broom.

DIVISION 600 INCIDENTAL CONSTRUCTION

Section 601. —MINOR CONCRETE STRUCTURES

Material

601.03 Composition (Concrete Mix Design). Delete Table 601-1 and replace with the following:

Table 601-1
Composition of Minor Concrete

Property	Specification
Cement content	611 pounds per cubic yard (362 kilograms per cubic meter) minimum
Water/cementitious material	0.49 maximum
Slump	5 inches (125 millimeters) maximum
Air content	4% maximum
Size of coarse aggregate	AASHTO M 43 With 100% passing the 1½-inch (37.5-millimeter) sieve
28-day compressive strength	4500 pounds per square inch (25 megapascal) minimum

Section 602. —CULVERTS AND DRAINS

06/15/22-FP14

Construction Requirements**602.03** Add the following:

Finish top of box culvert surface according to Subsection 552.14(c)(2).

Measurement**602.09** Add the following:

Do not measure cutoff wall for payment.

Payment**602.10** Delete the text of this Subsection and add the following:

Payment for geotextile is included in bid item 20402-0000 and 25101-0100.

Payment for cutoff wall is included in bid items 60220-1750 and 60220-3960.

Section 615. — SIDEWALKS, PADS, AND PAVED MEDIANS

Description

615.01 Add the following:

This work also consists of furnishing and installing detectable warning panels and placing welded wire reinforcing steel.

Material

615.02 Add the following to the material list:

Detectable Warning Panels	725.19
Reinforcing Steel	709.01

Construction Requirements

615.04 Concrete Sidewalks, Pads, and Medians. Add the following to the first paragraph:

Place 6 inch by 6 inch W4.0 x W4.0 welded wire reinforcing steel in all concrete sidewalks. Splice welded wire according to Subsection 554.09.

Submit a test panel, 2 feet by 2 feet, of the sidewalk, exposed aggregate concrete at least 7 days prior to installation to the CO for approval. Cure test panel a minimum of 7 days outside. Place test panel in sunlight for approval.

615.04A Detectable Warning Panel. (Added Subsection).

Submit a representative sample of the detectable warning panel at least 7 days prior to installation to the CO for approval. The dimension of the sample will be as shown on the plans. Label the sample with the name, address, and phone number of the manufacturer. Final color to be approved by CO.

Conform to ACI 305 “Standards on Hot Weather Concreting” and ACI 306 “Standards on Cold Weather Concreting” when storing and placing panels.

Furnish 3 copies of the manufacturer’s installation instructions to the CO.

Truncated dome spacing and dimension shown on the plans may vary according to manufacturer and must comply with the requirements of Architectural Barriers Act Accessibility Standards (ABAAS) for Accessible Public Rights-of-Way, Section R705 – Detectable Warning.

Install detectable warning panels according to the manufacturer’s installation instructions and the following:

Special Contract Requirements

Project: WY FLAP TET TR200(1), Sagebrush Connector Pathway

- (a) Where the intersection edge is concrete, remove concrete and place continuous sidewalk concrete from the intersection edge to 12-inches back of the new detectable warning panel as applicable.
- (b) Where the intersection edge is asphalt, remove asphalt from 12 inches in front of the detectable warning panel and place continuous sidewalk concrete from the intersection edge to 12 inches back of the new detectable warning panel as applicable.
- (c) Place a standard sidewalk finish according to Subsection 552.14(c)(2) for all concrete placed around detectable warning panel's.
- (d) Panels are to be placed according to the manufacturer's recommendations. Ensure that the edges running parallel with the centerline of the pathway are no greater than 2 inches in width.
- (e) Locate detectable warning panel's as follows:
 - (1) In cases where the intersection is perpendicular to the pathway, install the leading (intersection side) edge of the detectable warning panel 12-inches from the flowline of the gutter or three feet from the edge of roadway, if gutter is not present.
 - (2) In cases where the intersection is not perpendicular to the pathway, set the panel perpendicular to the pathway centerline and ensure the leading (intersection side) edge of the detectable warning panel is no less than 12 inches and no more than 55 inches from the intersection.
 - (3) In cases where the above requirements do not fit field conditions, set detectable warning panel's at a diagonal to the centerline of the pathway with the leading (intersection side) edge of the detectable warning panel one foot from the flowline of the gutter or 3 feet from the edge of roadway, if gutter is not present. Cut the ends of the detectable warning panel parallel to centerline and as directed by the CO.
- (f) Perform all field cuts necessary to ensure detectable warning panel's fit as described above and as directed by the CO.
- (g) Install panels flush with surrounding concrete so the base of truncated dome is flush with adjacent surfaces.
- (h) Square edges of panels butted together.

615.07 Acceptance. Add the following:

Material for detectable warning panels will be evaluated under Subsections 106.02 and 106.03.

Installation of detectable warning panels will be evaluated under Subsections 106.02 and 106.04.

Welded wire reinforcing steel material will be evaluated under Subsections 106.02 and 106.03.

Welded wire reinforcing steel installation will be evaluated under Subsections 106.02 and 106.04.

Special Contract Requirements

Project: WY FLAP TET TR200(1), Sagebrush Connector Pathway

Measurement**615.08** Add the following:

Do not measure bedding material for payment.

Do not measure welded wire reinforcing steel for payment.

Measure detectable warning panel by the square yard placed in concrete.

Section 622. — RENTAL EQUIPMENT

08/01/14-FP14

Description

622.01 Delete the text of this Subsection and substitute the following:

This work consists of furnishing and operating equipment for the construction work as ordered by the CO and listed below. Work under this Section does not include equipment time used to perform work provided for under any other pay item shown in the bid schedule. The work anticipated under this Section includes:

- (a) Final grading of disposal site;
- (b) Additional erosion control measures not included in Section 157;
- (c) Miscellaneous landscaping as directed by the CO;
- (d) Minor excavation work as directed by the CO; and
- (e) Ripping material between slope stake limits and clearing limits as directed by the CO.

Construction Requirements

622.02 Rental Equipment. Delete the text of the first paragraph and substitute the following:

Furnish and operate the following equipment:

<u>Number of Units</u>	<u>Type of Equipment</u>
1	Dump truck, 10 cubic yard minimum capacity
1	Backhoe loader, 8 cubic foot minimum rated capacity bucket, 30-inch width
1	Wheel loader, 1 cubic yard minimum rated capacity
1	Bulldozer, 160HP minimum flywheel power
1	Hydraulic Excavator
1	Loader, wheel, skid steer, 40HP minimum

Submit the model number and serial number for each piece of equipment before use. Make equipment available for inspection and approval before use.

Special Contract Requirements

Project: WY FLAP TET TR200(1), Sagebrush Connector Pathway

Section 623. — GENERAL LABOR

08/01/14-FP14

Description

623.01 Delete the text of this Subsection and substitute the following:

This work consists of furnishing workers and hand tools for the work listed in Subsection 622.01.

Section 624. — TOPSOIL

Construction Requirements

624.03 Preparing Areas. Add the following:

Roughen all areas requiring topsoil to create a minimum of 2 inch deep grooves parallel with the slope contours during dry weather. Leave the soil surface roughened such that obvious furrows are eliminated and a clear break between topsoil and subgrade layers is not produced.

624.04 Placing Topsoil. Delete this Subsection and substitute the following:

Provide at least a 7-day notice before the start of topsoil placement. Do not place topsoil when the ground or topsoil is frozen, excessively wet, or otherwise in a condition detrimental to the work. Keep the roadway surfaces clean during hauling and spreading operations.

Spread topsoil to a depth that, after settlement, provides the required depth. Break clods and lumps with harrows, disks, or other appropriate equipment to provide a uniform textured soil. Remove and dispose of all stumps, roots, and branches larger than 2 inches in diameter, and rocks larger than 4 inches in any direction. Remove all rocks less than 4 inches in any dimension that are not firmly embedded. Remove rocks that protrude more than 2 inches and are within 5 feet of the edge of pavement. Pressing rocks into the soil is not an acceptable method of removing rocks from the surface.

Do not place topsoil against mature trees and maintain a minimum 24-inch clearance between placed soil and tree base.

Place conserved topsoil stockpiles and windrows in the immediate vicinity from which it was conserved to the extent possible.

Place topsoil onto ledges, pockets and depressions on slopes by mechanical or hand labor means. Do not drive any equipment over topsoil after it has been placed.

Section 633. — PERMANENT TRAFFIC CONTROL

08/01/14-FP14

Description

633.01 Amend as follows:

Delete the text of the third paragraph and substitute the following:

Sign posts are designated as wood.

Add the following:

This work also includes providing and installing snow pole holders and snow poles.

Material

633.02 Add the following to the material list:

Subbase, Base, and Surface Course Aggregate	703.05
Aluminum	718.03(c)
Backfill Material	704.03
Bedding Material	704.02
Extruded aluminum	718.03(e)
Reinforced plastic (fiberglass)	718.03(d)(2)
Snow pole	718.05(e)
Legends and Boards	718.07
Paint	719.10
Paint for Timber Structures	719.02
Steel pipe	717.06

Construction Requirements

633.03 **General.** Add the following:

The NPS will furnish all signs under Item 63301 for installation. Signs furnished by NPS will be painted. Submit to the CO a 14-day notice requesting availability of government furnished materials. Materials will be made available to the Contractor at Moose Headquarters, Moose, Wyoming. Transport materials to the work site. Protect all government furnished materials from damage until time of acceptance. Repair or replace damaged sign panels or assemblies, caused by the Contractor's handling or operations, at no expense to the Government.

(a) Type 1. The NPS will furnish sign panels, posts, and hardware to attach sign panels to the posts for installation at the Sagebrush Parking Area.

Special Contract Requirements

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(b) Type 2. The NPS will furnish wood sign panels, posts, and hardware to attach the sign panels to the posts for installation at the concrete pad at the intersection of pathway and Sagebrush Parking Area.

633.04 Sign Posts. Add the following:

Fabricate sign posts from wood.

Replace all damaged posts.

Finish sign supports with two coats of paint in accordance with Subsection 719.02 and Section 563 as approved by the CO. Prior to painting, submit a color sample of the paint on the wood to the CO for approval. Apply paint according to the manufacturer's recommendations. Provide a copy of the manufacturer's recommendations when requested by the CO. Touch up any areas of finish damaged during installation with additional paint. Paint in accordance with Section 563 as approved by the CO.

Carefully trim all field cuts or abrasions made in supports after treatment. Dip, soak, spray, or apply three brush coats of a copper naphthenate solution prepared in accordance with AWPA M4 to field cut areas. Apply only to areas that will not be painted, such as buried portion of the posts. Apply the preservative in such a manner that it does not drip or spill into the aquatic environment or onto the soil.

633.05 Sign Panels. Amend as follows:

Add the following before paragraph (a):

Clean the surface to be painted to remove all oil, grease, dirt, salts, and other contaminants with an acetic acid solution. Paint the backside of all sign panels with two coats of paint in accordance with Subsection 719.10 and Section 563 and as approved by the CO.

Penetrate sign at locations that do not obscure the sign message. Make panels flat and free of buckles, warp, dents, cockles, burrs, and other defects.

Apply the retroreflective sheeting material to the panels. Package sign panels in protective material and transport them in a vertical position.

(a)(1) Panels. Delete the sixth paragraph and substitute the following:

Use retroreflective sheeting as specified and according to ASTM D4956. For roadside signs, use Type III, IV, VIII, IX, or XI prismatic retroreflective sheeting. Use fluorescent yellow-green sheeting for school crossing signs.

Add the following:

Fabricate sign panels from aluminum or steel.

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633.06A Snow Pole Holder. (Added Subsection).

Fabricate steel snow pole holders and caps as indicated in the plans. Crimp the snow pole holders and grind the surfaces of the caps and holders to remove fabrication and seam burrs prior to galvanizing. Galvanize snow pole holders and caps according to Subsection 717.07 prior to shipment to the project. Ensure that caps fit snugly into holders and are removable by hand methods after galvanization.

Paint scrapes and blemishes on galvanized surfaces that expose the base metal with two coats of zinc-oxide paint.

Construct and place snow pole holders as shown in the plans or at locations determined by the CO. Install crimped end perpendicular to traffic flow. Install snow pole holder type I in concrete.

Provide a sample snow pole meeting the requirements of Subsections 718.05(e) and 717.06 for approval by the CO before ordering snow poles. Provide one fiberglass snow pole for each installed snow pole holder. Deliver and install snow poles as directed by the CO.

Measurement**633.09** Add the following:

Snow poles, snow pole caps, concrete, and bedding material are incidental to the snow pole holder pay item and will not be measure separately for payment.

Snow pole holders and associated caps will be evaluated under Subsections 106.02 and 106.03.

Do not measure excavation, backfill, concrete, hardware, and aggregate for payment in the installation of Item 63301.

Section 634. — PERMANENT PAVEMENT MARKINGS

04/02/21-FP14

Construction Requirements**634.09 Nonreflectorized Markings (Type K).** Add the following:

Apply 1 coat only of all yellow pavement markings. Apply yellow pavement markings at 107 square feet per gallon.

634.11 Acceptance. Add the following:

Submit all certifications a minimum of 14 days prior to paint application.

Measurement**634.12** Add the following to the second paragraph:

When two coats of paint are required, measure each coat.

Section 635. — TEMPORARY TRAFFIC CONTROL

11/12/20-FP14

Material

635.02 Amend as follows:

Delete the following from the material list:

Sign panels	633.05
Sign posts	633.04

Add the following to the material list:

Sign hardware	718.06
Sign panels	718.03
Sign posts	718.04

Construction Requirements

635.07 **Construction Signs.** Delete the text of this Subsection and substitute the following:

Fabricate and install sign panels according to Subsection 633.05. Use Type III, IV, VIII, IX, or XI prismatic retroreflective sheeting on sign panels. Roll-up signs may be used instead of panels when approved by the CO. For roll-up signs, use Type VI retroreflective sheeting.

Furnish posts conforming to Subsection 718.04, except wood posts may be untreated. Install posts according to Subsection 633.04. Portable sign supports may be used instead of sign posts when approved by the CO.

Remove or completely cover unnecessary signs. Use metal, plywood, or other acceptable material to cover signs. Do not use adhesive glue, tape, or mechanical fasteners that mar the face of the panel of the sign to be covered.

635.23 **Acceptance.** Delete the first paragraph and substitute the following:

Material for temporary traffic control devices will be evaluated under Subsections 106.02 and 106.03. Do not provide a copy of the certifications for temporary traffic control materials to the CO, unless otherwise directed by the CO.

Measurement

635.24 Add the following:

Measure flaggers for each hour a person is actually flagging.

Special Contract Requirements

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Section 646. — ROADSIDE DEVELOPMENT (ADDED SECTION)

08/01/14-FP14

Description

646.01 This work consists of installing a government furnished bench.

Material

646.02 Conform to the following Section and Subsections:

Minor concrete	601
Reinforcing Steel	709.01
Sealants, Fillers, and Seals	712.01
Structural Steel	717.01
Subbase, Base, and Surface Course Aggregate	703.05

Construction Requirements

646.03 Bench. Coordinate with the CO to measure the government provided bench and confirm layout prior to constructing foundation. Stake foundation locations based on plans and confirmed bench connections. Allow 2 days for staking locations to be approved by the CO.

Install foundation and connection for bench in accordance with the plans and as approved by the CO.

Install bench furnished by the government and as approved by the CO. The anticipated weight of the bench is 500 pounds. Prior to placement, set bench to required levels and lines, with members plumb, true to line, cut and fitted. Attach support to ensure proper fit and spacing.

Use an exposed aggregate finish in accordance with Subsection 522.14(c)(4). Match the finish of the foundation the sidewalk, exposed aggregate concrete surrounding the foundation limits.

646.04 Acceptance. Material, bolts, reinforcing steel for bench foundation will be evaluated under Subsections 106.02 and 106.03.

Excavation and backfill for bench will be evaluated under Section 209.

Concrete work for bench will be evaluated under Section 601.

Special Contract Requirements

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Measurement

646.05 Measure the Section 646 items listed in the bid schedule according to Subsection 109.02.

Payment

646.06 The accepted quantities will be paid at the contract price per unit of measurement for the Section 646 pay items listed in the bid schedule. Payment will be full compensation for the work prescribed in this Section. See Subsection 109.05.

DIVISION 700 MATERIAL
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Section 704. — ROADSIDE IMPROVEMENT MATERIAL

04/02/21-FP14

704.07 Select Borrow. Delete this Subsection and substitute the following:

Furnish a suitable material conforming to the following:

- | | |
|--|--------------------|
| (a) Maximum particle size | 24 in (600 mm) |
| (b) Soil classification, AASHTO M 145 | A-1, A-3, or A-2-4 |

Section 713. — ROADSIDE IMPROVEMENT MATERIAL

11/08/21-FP14

713.12 Fiber Rolls and Socks. Amend as follows:

Add the following after paragraph (a):

Table 713-2A

Size of Fiber Rolls	Slope Steepness
9"	2H:1V or less
12"	Greater than 2H:1V

(a) Excelsior fiber rolls. Delete text of first sentence and substitute the following:

Provide excelsior (certified weed free) logs that consist of drainage filter made of curled aspen wood excelsior and rolled into a cylindrical shape with a consistent width of fibers evenly distributed throughout the cylinder. Provide logs with a minimum of 9 inches and a maximum of 12 inches in diameter. They shall contain a minimum of 3 pounds of wood fiber per 12 inches encased in 100 percent biodegradable burlap netting. Certify all material in the log as weed free. Submit a sample log for approval to the CO two weeks prior to the installation. The CO will approve the log in consultation with a National Park Service representative.

(b) Straw fiber rolls. Delete the text of this Subsection.

Section 717. — STRUCTURAL METAL

7/21/17-FP14

717.01 Structural Steel. Delete the text of this Subsection and substitute the following:

(a) Structural carbon steel. Structural carbon steel for riveted, bolted, or welded construction shall conform to ASTM A 36. In addition, steel for primary bridge members and fracture critical bridge members shall meet the supplementary requirements for Charpy V-notch test.

(b) High-strength low-alloy structural (HSLA) steel. High-strength, low-alloy structural steel, or steel requiring enhanced atmospheric corrosion resistance for riveted, bolted, or welded construction, use steel conforming to ASTM A 588. In addition, steel for primary bridge members and fracture critical bridge members shall meet the supplementary requirements for Charpy V-notch test.

(c) Subsection not used.

(d) Bolts and nuts. Conform to ASTM A 307.

(e) High-strength bolts, nuts, and washers. Conform to either AASHTO M 164 or AASHTO M 253, as specified. Use Type 3 bolts in combination with unpainted weathering structural steel.

717.06 Steel Pipe. Delete the text of this Subsection and substitute the following:

Conform to the following:

(a) Steel Pipe. Furnish galvanized steel pipe conforming to ASTM A53, Type F, standard weight class, and plain ends for the designation specified in the contract.

(b) Snow Pole Holders. Furnish steel pipe conforming to ASTM A53, ASTM A106 or ASTM A500, standard weight class, and plain ends for the designation specified in the contract.

717.07 Galvanized Coatings. Delete this Subsection and substitute the following:

When specified, galvanize steel according to AASHTO M 111.

Section 718. — TRAFFIC SIGNING AND MARKING MATERIAL

718.05 Object Marker and Delineator Posts. Add the following:

(e) Snow Pole. Posts are to be rectangular snow pole, 120 inch long, orange snow pole delineator with yellow type III retro reflective sheeting. Place 4 inch wide retro reflective sheeting tape around the top of pole. Provide an orange fiberglass snow pole for each snow pole holder. The snow pole will be designed for maximum stiffness to accommodate longer lengths and intended for marking higher speed roads or highways. Poles must be capable of mounting to guardrails or fiberglass marker posts with Rockart Snow Pole Brackets to match the existing Grand Teton Park maintenance procedures, or capable of being driven directly into the ground. Snow poles must be capable of having reflective sheeting applied to both sides of the flat surfaces of the rectangular posts.

718.10 Waterborne Traffic Paint. Add the following to paragraph (f):

(3) Blue, ASTM D 1729

Match FHWA standard

Delete the text in paragraph (g) and substitute the following:

(g) Daylight reflectance. (Without glass beads).

(1) White, ASTM E 1347

84 percent relative to
magnesium oxide standard

(2) Yellow, ASTM E 1347

55 percent relative to
magnesium oxide standard

Section 719. — PAINT

06/15/22-FP14

719.02(b) Paint. Add the following:

Furnish Paint meeting the Sherwin Williams – SuperPaint® Exterior Acrylic Latex Paint (BM Oxford Brown color) specifications. Identification by brand name is intended to be descriptive, not restrictive, and is intended to indicate the quality and characteristics of products that will be satisfactory. Submit “or equal” products meeting the following salient characteristics to the CO for approval:

Table 719-1
Salient Characteristics

CCE Colorant	OZ	32	64	128
B1-Balck	4	12		
N1- Raw Umber		55	1	1
R2 - Maroon		23		
Y3- Deep Gold	2	37		

719.08 Penetrating Stain. Delete the last sentence and add the following:

(e) Mildew resistance. According to Federal Test Method Standard 144, Method 6271.

Store stain according to manufacturer's recommendations, with special attention given to recommended temperature range.

719.10 Paint. (Added Subsection).

Furnish Paint meeting the Sherwin Williams – SuperPaint® Exterior Acrylic Latex Paint (BM Oxford Brown color) specifications. Identification by brand name is intended to be descriptive, not restrictive, and is intended to indicate the quality and characteristics of products that will be satisfactory. Submit “or equal” products meeting the following salient characteristics to the CO for approval:

Section 725. — MISCELLANEOUS MATERIAL

11/12/20 – FP-14

725.19 Detectable Warning Panel. (Added Subsection).

Prefabricate detectable warning panels from any epoxy polymer composition that includes an ultra violet stabilized coating employing aluminum oxide particles in the truncated domes. This in-line dome spacing will be 2.35 inch center-to-center. The truncated dome size will be 0.9-inch base diameter and 0.45-inch top diameter.

Detectable warning panels also will have all the following characteristics:

Table 725-1

ASTM Reference	Test Description	Required Test Results
ASTM D 695	Compressive Strength	26,800 (Minimum)
ASTM D 790	Flexural Strength	31,000 (Minimum)
ASTM D 570	Water Absorption	0.05% (Maximum)
ASTM C 1028	Slip Resistance	1.10 Dry/0.80 wet (Minimum)
ASTM E 84	Flame Spread Index	≤ 25
ASTM B 117	Salt Spray	No Change (300 hours)
ASTM 1308	Chemical Stain	No Effect
ASTM C 501	Abrasion Resistance	lw>500
ASTM G 155	Accelerated Weathering	Delta E <5 (2000 hours)
ASTM D 638	Tensile Strength	12,750 psi (Minimum)
AASHTO-H20	Load Bearing at 10,410 lbs	No Cracking, Delamination or Deformation
ASTM C 1026	Freeze/Thaw/Heat	No Chipping, Cracking, or Peeling
ASTM D 1037	Accelerated Aging (Freeze/Thaw)	No Changing in Color, Gloss, or Delamination
RCRA-C	Non-Hazardous Classification	Non-Hazardous

725.20 Ring bolts. (Added Subsection).

Conform to ASTM A489. Galvanize according to AASHTO M 232.

725.21 Epoxy. (Added Subsection).

Furnish components for overlay mixtures conforming to the following for the type or types specified in the contract.

Special Contract Requirements

Project: WY FLAP TET TR200(1), Sagebrush Connector Pathway

(a) Epoxy. Furnish *Pro-Poxy Type III D.O.T.*, made by Unitex/Dayton Superior or approved equal. Identification by brand name is intended to be descriptive, not restrictive, and is intended to indicate the quality and characteristics of products that will be satisfactory. Submit “or equal” products meeting the following salient characteristics to the CO for approval:

The epoxy resin shall be composed of a two-component, 100 percent solids, low modulus, thermosetting, moisture-insensitive epoxy conforming to ASTM C-881, Type III, Grade 1 and AASHTO M-235 specifications with the properties specified in Table 725-1.

(b) Primer. Furnish a primer compatible with the Epoxy Concrete Overlay system, as recommended by the manufacturer and approved by the CO.

P E R M I T S

No government obtained permits were required for this project.

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FIRE PREVENTION AND SUPPRESSION PLAN

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FIRE PROTECTION AND SUPPRESSION

The following requirements pertain to normal level non-heightened fire restriction periods. More restrictive requirements will be required in the event of more active fire seasons.

1. Fire Control

The Contractor shall, independently and in cooperation with the (Park), take all reasonable action to prevent and suppress fires in the project area. Independent initial action shall be prompt and shall include the use of all personnel and equipment available in the project area.

2. Fire Precautions

Specific fire precautionary measures are as follows:

a. Smoking and Open Fires

Smoking shall be permitted only at the option of the Contractor. The Contractor shall not allow open fires on the project area, open fires are not allowed within the Park.

Unless restricted by State Law or Federal Regulation, smoking shall be permitted only in such portions of the project area that are free of flammable material. Smokers are required to discard extinguished cigars and cigarette butts in an appropriate non-flammable container. Under no circumstances shall butts be discarded on the road or roadside.

b. Fire Extinguishers and Equipment, on Trucks, Tractors, etc.

All power-driven equipment operated by the Contractor, except portable fire pumps, shall be equipped with one fire extinguisher having a UL rating of at least 5 B, C, and one "D" handled or long handled round pointed shovel, size "O" or larger. In addition, each motor patrol, truck and passenger-carrying vehicle shall be equipped with a double-bit axe or Pulaski, 3½ pounds or larger.

Equipment shall be kept in serviceable condition and shall be readily available.

c. Power Saws

Each gasoline power saw operator shall be equipped with a pressurized chemical fire extinguisher of not less than 8-ounce capacity by weight, and one long handled round point shovel, size "O" or larger. The extinguisher shall be kept in possession of the saw operator at all times. The shovel shall be accessible to the operator within 1 minute.

d. Grinding, Oxyacetylene cutting and welding

One 5-gallon bladder bag is required at each job site location where these activities are being conducted.

e. Extinguishers

One refill for each type or one extra extinguisher sufficient to replace each size extinguisher required on equipment shall be safely stored in the fire tool box or other agreed upon place on the project area that is protected and readily available.

f. Spark Arresters and Mufflers

Each internal combustion engine shall be equipped with a spark arrester meeting appropriate Society of Automotive Engineers (SAE) recommend Practice J335(b) and J350(a) as now or hereafter amended unless it is:

(1) Equipped with a turbine-driven exhaust supercharger such as the turbo charger. There shall be no exhaust bypass.

(2) A passenger carrying vehicle or light truck, or medium truck up to 40,000GW, used on roads and equipped with a factory designed muffler complete with baffles and with an exhaust system in good working condition.

(3) A heavy-duty truck, such as a dump or log truck, or other vehicle used for commercial hauling, used only on roads and equipped with a factory designed muffler and with a vertical stack exhaust system extending above the cab.

Exhaust equipment described in this Subsection, including spark arresters and mufflers, shall be properly installed and constantly maintained in serviceable condition.

g. Tank Truck

The Contractor shall provide a tank truck or trailer, containing not less than 300 gallons of water during yarding, loading, land clearing, right of way clearing and mechanical treatment of slash. A tank truck or trailer will not be required if power saw falling and bucking is the only operation. Such tank truck or trailer shall be maintained in a serviceable condition and located within 10 minutes, round trip, from each project area during fire period and closed season.

The tank truck or trailer shall be equipped with a pump capable of discharging 20 gallons of water per minute, using a 1/4-inch nozzle tip, through a 50-foot length of rubber lined hose. In addition, 500 feet of serviceable fabric jacket rubber lined hose of not less than 1 inch outside diameter, fitted with a nozzle capable of discharging a straight stream of 1/4-inch diameter and a spray pattern, shall be immediately available for use. The tank, pump and at least 250 feet of hose and nozzle shall be connected and ready for use at all times.

If a trailer is used, it shall be equipped with a hitch to facilitate prompt movement. A serviceable tow vehicle shall be immediately available for attachment to the trailer and must meet the time requirements stated above. Such truck or trailer shall be equipped to operate for a minimum of 8 hours. Tank truck or trailer shall be available from the start of work to the end of the Fire Watch/Fire Security service.

h. Communications

The Contractor shall provide adequate 2-way communication facilities to report a fire to the CO and Teton Interagency Dispatch within 15 minutes of detection. FCC Regulations prohibit commercial use of Citizen Band (CB) radios (CBs are not considered adequate 2-way communications).

Communications shall be operable during all periods of contract operation.

3. Fire Tools

The Contractor shall furnish serviceable fire-fighting tools at each job site location where activities are being conducted in a readily accessible fire tool box or compartment of sound construction with a hinged lid and hasp so arranged that the box can be secured or sealed. The box shall be red and marked "Fire Tools" in letters at least 1 inch high. It shall contain a minimum of:

- (a) 2 axes or Pulaskis with a 32-inch handle;
- (b) 3 adze eye hoes. One Pulaski may be substituted for one adze eye hoe;
- (c) 3 long handled, round point shovels, size "O" or larger.

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