

**Solicitation No.  
04SP101560**



# **Debris Disposal - Franklin D. Roosevelt Lake**

## **Grand Coulee, WA Pacific Northwest Region**

**UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF RECLAMATION  
PACIFIC NORTHWEST REGION  
2004**

**This Solicitation issued by  
Regional Director  
Pacific Northwest Region  
Bureau of Reclamation  
1150 North Curtis Road, Suite 100  
Boise ID 83706-1234**

**Phone inquiries  
regarding this solicitation  
should be made to  
Regional Acquisition Management Officer  
Telephone Number: (208) 378-5364**

# **DEBRIS DISPOSAL ON FDR LAKE GRAND COULEE POWER OFFICE GRAND COULEE, WA**

## **FOREWORD**

The work includes operating and maintaining Government-owned facilities for debris collection and disposal, collecting the debris from Franklin D. Roosevelt Lake, and disposing of the debris. The work is located on Franklin D. Roosevelt Lake (part of the Columbia River behind Grand Coulee Dam, Washington), near the town of Kettle Falls, Washington. The collection facilities are located at the mouth of the Kettle River (approximately River Mile 707), and at China Bar (approximately River Mile 724), and the disposal facility is located at Boise Cove, downstream from the mouth of the Kettle River (approximately River Mile 702). The work includes capturing floating debris, containing it with log booms and towing it to Boise Cove, removing the debris from the river, and disposing of the debris. The incumbent has provided this service for the past 25 years. They have the necessary equipment, resources, and skilled labor to accomplish the work.

This solicitation includes clauses and provisions designated for service type contracts and for time and material contracts. The main intent of this contract is to provide services to operate and maintain debris collection facilities. The majority of the clauses and provisions will impact both types of contracts (service and time and material), in order to clearly indicate which clauses and provisions are only for service or only for time and material the table of contents will have a letter designator indicating which type of contract applicable to that clause or provision.

***“S” Designates a clause or provision that is applicable only to the “Service” CLINs. These clauses apply to the operating, maintaining, and monitoring the debris collection facilities.***

***“T” Designates a clause or provision that is applicable only to the “Time and Materials” CLINs.***

***If there is no letter designator assigned to a clause or provision that clause or provision is applicable to the entire contract.***

***All contract line item numbers (CLINs) are service or time and material CLINs except for CLIN 001. This CLIN is for supplying log booms. This CLIN is a minor portion of the contract price and is considered incidental to the service portion of this contract.***

**PART I - THE SCHEDULE**

**SECTION A - SOLICITATION/CONTRACT FORM** ..... A-1

**SECTION B - BID SCHEDULE** ..... B-1

**SECTION C - SPECIFICATIONS AND DRAWINGS** ..... C-1

    C.1 GENERAL ..... C-1

    C.2 OPERATION AND MAINTENANCE OF DEBRIS COLLECTION FACILITIES ..... C-2

    C.3 CONTRACTOR RESPONSIBILITIES ..... C-4

    C.4 TIME AND MATERIALS ..... C-8

    C.5 SERVICE REQUIREMENTS ..... C-9

    C.6 MEASUREMENT AND PAYMENT ..... C-10

    C.7 SAFETY ..... C-10

    C.8 SPECIAL CONTRACT CONDITIONS AND REQUIREMENTS ..... C-12

    C.9 GOVERNMENT-FURNISHED PROPERTY/EQUIPMENT ..... C-13

    C.10 OPERATING RECORD ..... C-15

**SECTION D - PACKAGING AND MARKING** ..... D-1

**SECTION E - INSPECTION AND ACCEPTANCE** ..... E-1

    (S) E.1. 52.246-4 INSPECTION OF SERVICES--FIXED-PRICE (AUG 1996) ..... E-1

    (T) E.2. 52.246-6 INSPECTION--TIME-AND-MATERIAL AND LABOR-HOUR (MAY 2001) ..... E-1

**SECTION F - DELIVERIES OR PERFORMANCE** ..... F-1

    F.1. 52.242-15 STOP-WORK ORDER (AUG 1989) ..... F-1

    F.2. PERIOD OF PERFORMANCE ..... F-1

**SECTION G - CONTRACT ADMINISTRATION DATA** ..... G-1

    G.1. WBR 1452.242-90 GOVERNMENT POINT OF CONTACT--BUREAU OF RECLAMATION--PN REGION (FEB 1995) ..... G-1

**SECTION H--SPECIAL CONTRACT REQUIREMENTS** ..... H-1

    H.1. WBR 1452.209-91 KEY PERSONNEL REQUIREMENTS--BUREAU OF RECLAMATION--PN REGION (FEB 1995) ..... H-1

**PART II--CONTRACT CLAUSES**

**SECTION I - CONTRACT CLAUSES** ..... I-1

I.1. WBR 1452.201-80 AUTHORITIES AND LIMITATIONS -- BUREAU OF RECLAMATION (JUL 1993) ..... I-1

I.2. 52.202-1 DEFINITIONS (DEC 2001) ..... I-2

I.3. 52.203-3 GRATUITIES (APR 1984) ..... I-4

I.4. 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984) ..... I-5

I.5. 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995) ..... I-6

I.6. 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995) ..... I-6

I.7. 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) ..... I-8

I.8. 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) ..... I-9

I.9. 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2003) ..... I-10

I.10. 1452.203-70 RESTRICTION ON ENDORSEMENTS--DEPARTMENT OF THE INTERIOR (JUL 1996) ..... I-15

I.11. 52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000) ..... I-16

I.12. 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995) ..... I-17

I.13. 52.215-2 AUDIT AND RECORDS--NEGOTIATION (JUN 1999) ..... I-17

I.14. 52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997) ..... I-19

I.15. 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997) ..... I-19

I.16. 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--MODIFICATION (OCT 1997) ..... I-21

I.17. 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997) . I-23

I.18. 52.215-13 SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS (OCT 1997) ..... I-24

I.19. 52.215-14 INTEGRITY OF UNIT PRICES (OCT 1997) ..... I-24

I.20. 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997) ..... I-25

I.21. 1452.215-70 EXAMINATION OF RECORDS BY THE DEPARTMENT OF THE INTERIOR (AUG 1996) (*DEVIATION*) ..... I-26

I.22. 1452.215-94 CONTRACTOR'S TECHNICAL PROPOSAL INCORPORATED INTO CONTRACT - BUREAU OF RECLAMATION - PN REGION (MAR 2001) ..... I-26

I.23.	52.217-8 OPTION TO EXTEND SERVICES (NOV 1999) . . . . .	I-27
I.24.	52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000) . . . . .	I-27
I.25.	52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)	I-27
I.26.	52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002) . .	I-29
I.27.	52.222-3 CONVICT LABOR (JUNE 2003) . . . . .	I-36
I.28.	52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-- OVERTIME COMPENSATION (SEPT 2000) . . . . .	I-37
I.29.	52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999) . .	I-38
I.30.	52.222-26 EQUAL OPPORTUNITY (APR 2002) . . . . .	I-38
I.31.	52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001) . . . . .	I-40
I.32.	52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998) . . . . .	I-44
I.33.	52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001) . . . . .	I-46
I.34.	52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989) . . . . .	I-47
(S) I.35.	52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989) . . . . .	I-54
(S) I.36.	52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT--PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 1989) . . . . .	I-55
I.37.	52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003) . . . . .	I-56
I.38.	52.223-6 DRUG-FREE WORKPLACE (MAY 2001) . . . . .	I-56
I.39.	52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003) . . . .	I-59
I.40.	WBR 1452.223-81 SAFETY AND HEALTH -- BUREAU OF RECLAMATION (DEC 2002) . . . . .	I-60
I.41.	WBR 1452.223-82 PROTECTING FEDERAL EMPLOYEES AND THE PUBLIC FROM EXPOSURE TO TOBACCO SMOKE IN THE FEDERAL WORKPLACE--BUREAU OF RECLAMATION (OCT 1998) . . . . .	I-61
I.42.	52.225-11 BUY AMERICAN ACT - CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (JUNE 2003) . . . . .	I-61
I.43.	52.227-1 AUTHORIZATION AND CONSENT (JUL 1995) . . . . .	I-65
I.44.	52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987) . .	I-66
I.45.	52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997) . . . . .	I-66
I.46.	1452.228-70 LIABILITY INSURANCE-DEPARTMENT OF THE INTERIOR (JUL 1996) . . . . .	I-67
I.47.	52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 2003) . . . . .	I-67

I.48.	WBR 1452.229-90 NOTICE OF WASHINGTON STATE SALES TAX-- BUREAU OF RECLAMATION--PN REGION (FEB 1995) . . . . .	I-68
I.49.	WBR 1452.231-81 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE -- BUREAU OF RECLAMATION (JUL 1998) . . . . .	I-68
(T) I.50.	52.232-7 PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR- HOUR CONTRACTS (DEC 2002) . . . . .	I-71
I.51.	52.232-8 DISCOUNTS FOR PROMPT PAYMENT (FEB 2002) . . . . .	I-74
I.52.	52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984) . . . . .	I-75
I.53.	52.232-11 EXTRAS (APR 1984) . . . . .	I-75
I.54.	52.232-17 INTEREST (JUN 1996) . . . . .	I-75
I.55.	52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986) . . . . .	I-76
I.56.	WBR 1452.232-80 LIMITATION OF FUNDS (FIXED-PRICE CONTRACT) -- BUREAU OF RECLAMATION (MAY 2000) . . . . .	I-76
(S) I.57.	52.232-25 PROMPT PAYMENT (OCT 2003) . . . . .	I-78
I.58.	52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER-CENTRAL CONTRACTOR REGISTRATION (OCT 2003) . . . . .	I-83
I.59.	52.233-1 DISPUTES (JULY 2002) ALTERNATE I (DEC 1991) . . . . .	I-85
I.60.	52.233-3 PROTEST AFTER AWARD (AUG 1996) . . . . .	I-86
I.61.	52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984) . . . . .	I-87
I.62.	52.236-13 ACCIDENT PREVENTION (NOV 1991) . . . . .	I-88
I.63.	52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984) . . . . .	I-88
I.64.	52.242-13 BANKRUPTCY (JUL 1995) . . . . .	I-89
(S) I.65.	52.243-1 CHANGES--FIXED-PRICE (AUG 1987) . . . . .	I-89
(T) I.66.	52.243-3 CHANGES--TIME-AND-MATERIALS OR LABOR-HOURS (SEPT 2000) . . . . .	I-90
I.67.	WBR 1452.243-80 MODIFICATION PROPOSALS -- BUREAU OF RECLAMATION (DEC 2001) . . . . .	I-91
I.68.	52.244-2 SUBCONTRACTS (AUG 1998) . . . . .	I-92
I.69.	52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996) . . . . .	I-94
I.70.	52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (APR 2003) . . . . .	I-95
I.71.	52.245-1 PROPERTY RECORDS (APR 1984) . . . . .	I-96
I.72.	52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (JUNE 2003) . . . . .	I-96
I.73.	52.248-1 VALUE ENGINEERING (FEB 2000) . . . . .	I-100
I.74.	52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996) . . . . .	I-107
I.75.	52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984) . . . . .	I-111
I.76.	52.253-1 COMPUTER GENERATED FORMS (JAN 1991) . . . . .	I-112

**PART III–DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**SECTION J - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS . . . . J-1**

**PART IV - REPRESENTATIONS AND INSTRUCTIONS**

**SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS**

**OF BIDDERS** . . . . . K-1

K.1. 52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION  
(APR 1985) . . . . . K-1

K.2. 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS  
TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991) . . . . . K-2

K.3. 52.204-3 TAXPAYER IDENTIFICATION (OCT 1998) . . . . . K-3

K.4. 52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS)  
(MAY 1999) . . . . . K-4

K.5. 52.209-5 CERTIFICATION REGARDING DEBARMENT SUSPENSION,  
PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS  
(DEC 2001) . . . . . K-4

K.6. 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS  
(APR 2002) . . . . . K-6

K.7. 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984) . . . . . K-8

K.8. 52.222-38 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING  
REQUIREMENTS (DEC 2001) . . . . . K-8

K.9. 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING  
(AUG 2003) . . . . . K-9

**SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO BIDDERS . . . . . L-1**

L.1. 52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER  
(OCT 2003) . . . . . L-1

L.2. 52.211-3 AVAILABILITY OF SPECIFICATIONS NOT LISTED IN THE GSA  
INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND  
COMMERCIAL ITEM DESCRIPTIONS (JUN 1988) . . . . . L-2

L.3. WBR 1452.211-80 NOTICE OF INTENT TO ACQUIRE METRIC PRODUCTS  
AND SERVICES - BUREAU OF RECLAMATION (MAR 1993) . . . . . L-13

L.4. 52.215-1 INSTRUCTIONS TO OFFERORS–COMPETITIVE ACQUISITION  
(JAN 2004) . . . . . L-14

L.5. 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR  
INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) . . . . . L-19

L.6. 1452.215-71 USE AND DISCLOSURE OF PROPOSAL INFORMATION--  
DEPARTMENT OF THE INTERIOR (APR 1984) . . . . . L-20

L.7. WBR 1452.215-80 SOURCE EVALUATION AND SELECTION  
PROCEDURES--BUREAU OF RECLAMATION (APR 2003) . . . . . L-22

L.8.	WBR 1452.215-81 GENERAL PROPOSAL INSTRUCTIONS--BUREAU OF RECLAMATION (JAN 1998) . . . . .	L-25
L.9.	WBR 1452.215-82 TECHNICAL PROPOSAL INSTRUCTIONS--BUREAU OF RECLAMATION (JAN 1998) . . . . .	L-26
L.10.	WBR 1452.215-83 PRICING PROPOSAL INSTRUCTIONS--BUREAU OF RECLAMATION (JAN 1998) . . . . .	L-29
L.11.	WBR 1452.215-91 FACSIMILE ACKNOWLEDGMENT OF AMENDMENTS, MODIFICATIONS TO OFFERS, AND WITHDRAWALS OF OFFERS- BUREAU OF RECLAMATION--PN REGION (MAR 2001) . . . . .	L-30
L.12.	1452.215-93 NOTICE OF INTENT TO INCORPORATE CONTRACTOR'S TECHNICAL PROPOSAL - BUREAU OF RECLAMATION - PN REGION (MAR 2001) . . . . .	L-31
L.13.	52.216-1 TYPE OF CONTRACT (APR 1984) . . . . .	L-32
L.14.	52.233-2 SERVICE OF PROTEST (AUG 1996) (DEVIATION) . . . . .	L-32
L.15.	WBR 1452.233-80 AGENCY PROCUREMENT PROTESTS BUREAU OF RECLAMATION (SEP 1997) . . . . .	L-32
L.16.	52.237-1 SITE VISIT (APR 1984) . . . . .	L-33
L.17.	52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984) . . .	L-33
<b>SECTION M - EVALUATION FACTORS FOR AWARD . . . . .</b>		<b>M-1</b>
M.1.	52.217-5 EVALUATION OF OPTIONS (JULY 1990) . . . . .	M-1
M.2.	WBR 1452.215-85 EVALUATION FACTORS FOR AWARD - QUALITY PREDOMINANCE--BUREAU OF RECLAMATION (APR 2001) . . . . .	M-1

<b>SOLICITATION, OFFER AND AWARD</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		<b>RATING</b> Not Rated	PAGE 1 OF 1 PAGES
2. CONTRACT NUMBER	3. SOLICITATION NO. 04SP101560	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED January 16, 2003	6. REQUISITION/PURCHASE NO. 040570
7. ISSUED BY BUREAU OF RECLAMATION OFFER DEPOSITORY: 04SP101560 1150 NORTH CURTIS ROAD, SUITE 100 BOISE ID 83706-1234			CODE _____	8. ADDRESS OFFER TO (If other than Item 7)	

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

### SOLICITATION

9. Sealed offers in original and (See Section L) copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in Room 203, 1150 North Curtis Road, Boise ID until 2:00 p.m. MST local time February 24, 2004  
(Hour) (Date)

CAUTION-LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

<b>10. FOR INFORMATION CALL:</b>	A. NAME Becky Young	B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) <b>(208) 378-5107</b> , E-Mail: byoung@pn.usbr.gov
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### 11. TABLE OF CONTENTS

( )	SEC.	DESCRIPTION	PAGE(S)	( )	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
( )	A	SOLICITATION/CONTRACT FORM	SF33	( )	I	CONTRACT CLAUSES	I-1
( )	B	SUPPLIES OR SERVICES AND PRICES/COSTS	B-1	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
( )	C	DESCRIPTION/SPECS./WORK STATEMENT	C-1	( )	J	LIST OF ATTACHMENTS	J-1
( <input checked="" type="checkbox"/> )	D	PACKAGING AND MARKING	D-1	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
( )	E	INSPECTION AND ACCEPTANCE	E-1	( )	K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	K-1
( )	F	DELIVERIES OR PERFORMANCE	F-1				
( )	G	CONTRACT ADMINISTRATION DATA	G-1	( )	L	INSTRS., CONDS., AND NOTICES TO OFFERORS	L-1
( )	H	SPECIAL CONTRACT REQUIREMENTS	H-1	( )	M	EVALUATION FACTORS FOR AWARD	M-1

### OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 90 calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8)	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offeror and related documents numbered and dated:	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
15A. NAME AND ADDRESS OF OFFEROR	CODE   _____	FACILITY   _____	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print)	

15B. TELEPHONE NO. (Include area code)	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE. <input type="checkbox"/>	17. SIGNATURE	18. OFFER DATE
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### AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION	
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304 (c) ( ) <input type="checkbox"/> 41 U.S.C. 253(c) ( )	23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)		ITEM
24. ADMINISTERED BY (If other than Item 7)   CODE _____	25. PAYMENT WILL BE MADE BY   CODE _____		
26. NAME OF CONTRACTING OFFICER (Type or print)	27. UNITED STATES OF AMERICA  (Signature of Contracting Officer)		28. AWARD DATE

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

**SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS**

ITEM #	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
001	Log Booms	150	each	_____	_____
Base Year: April 1, 2004 through March 31, 2005 –					
002	(a) Debris Disposal Services - 2004 Season -	EST. 2,000	ton	_____	_____
	(b) Operate and Maintain Debris Collection Facilities - April through November	8	month	_____	_____
	(c) Monitor Facilities & Equipment - December through March	4	month	_____	_____

003 Schedule Table for Time and Materials Work Items:

TIME AND MATERIAL WORK ITEMS					
Item No.	Section	Work or Material	Quantity and Unit	Unit Price	Amount
003	C.4	Miscellaneous Work of Existing Unknown Requirements (NOT TO EXCEED \$35,000 for item #003) See 52.232-7	N/A	N/A	
<b>A. Fully-loaded hourly labor rates for:</b>					
		Laborer	30	\$	\$
		Heavy Equipment Operator	20	\$	\$
OFFERORS: You may propose additional labor categories here. Please fill in the category title, the estimated number of hours, and the pricing information:					
		Other _____	____ Hours	\$	\$
		Other _____	____ Hours	\$	\$
		Other _____	____ Hours	\$	\$
		Other _____	____ Hours	\$	\$
<b>Subtotal of Hourly Labor</b>			N/A	N/A	\$
<b>B. Materials and Subcontracts:</b> <i>The Contractor will be reimbursed for the cost of materials and subcontracts in accordance with FAR clause 52.237-7.</i>					
		Estimated Cost (not to exceed)			\$20,000
		Material Handling Fee (enter percentage)			_____ %
<i>(For price evaluation purposes only, the Government will assume the cost of materials to be \$20,000 which will be multiplied by the offeror's proposed handling fee, combined with the estimated cost of materials and the result will be added to the offerors total price.)</i> Example: \$20,000 + [20,000 x 10%] = \$22,000					

**SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS (Con't)**

ITEM #	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
First Option Year: April 1, 2005 through March 31, 2006 –					
004	(a) Debris Disposal Services - 2005 Season -	EST. 2,000	ton	_____	_____
	(b) Operate and Maintain Debris Collection Facilities - April through November	8	month	_____	_____
	(c) Monitor Facilities & Equipment - December through March	4	month	_____	_____

005 Schedule Table for Time and Materials Work Items:

TIME AND MATERIAL WORK ITEMS					
Item No.	Section	Work or Material	Quantity and Unit	Unit Price	Amount
005	C.4	Miscellaneous Work of Existing Unknown Requirements (NOT TO EXCEED \$35,000 for item #005) See 52.232-7	N/A	N/A	
<b>A. Fully-loaded hourly labor rates for:</b>					
		Laborer	30	\$	\$
		Heavy Equipment Operator	20	\$	\$
OFFERORS: You may propose additional labor categories here. Please fill in the category title, the estimated number of hours, and the pricing information:					
		Other _____	____Hours	\$	\$
		Other _____	____Hours	\$	\$
		Other _____	____Hours	\$	\$
		Other _____	____Hours	\$	\$
<b>Subtotal of Hourly Labor</b>			N/A	N/A	\$
<b>B. Materials and Subcontracts:</b> <i>The Contractor will be reimbursed for the cost of materials and subcontracts in accordance with FAR clause 52.237-7.</i>					
Estimated Cost (not to exceed)					\$20,000
Material Handling Fee (enter percentage)					_____%
<p>(For price evaluation purposes only, the Government will assume the cost of materials to be \$20,000 which will be multiplied by the offeror's proposed handling fee, combined with the estimated cost of materials and the result will be added to the offerors total price.)            Example: \$20,000 + [20,000 x 10%] = \$22,000</p>					

**SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS (Con't)**

ITEM #	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
Second Option Year: April 1, 2006 through March 31, 2007 –					
006	(a) Debris Disposal Services - 2006 Season -	EST. 2,000	ton	_____	_____
	(b) Operate and Maintain Debris Collection Facilities - April through November	8	month	_____	_____
	(c) Monitor Facilities & Equipment - December through March	4	month	_____	_____

007 Schedule Table for Time and Materials Work Items:

TIME AND MATERIAL WORK ITEMS					
Item No.	Section	Work or Material	Quantity and Unit	Unit Price	Amount
007	C.4	Miscellaneous Work of Existing Unknown Requirements (NOT TO EXCEED \$35,000 for item #007) See 52.232-7	N/A	N/A	
<b>A. Fully-loaded hourly labor rates for:</b>					
		Laborer	30	\$	\$
		Heavy Equipment Operator	10	\$	\$
OFFERORS: You may propose additional labor categories here. Please fill in the category title, the estimated number of hours, and the pricing information:					
		Other _____	____Hours	\$	\$
		Other _____	____Hours	\$	\$
		Other _____	____Hours	\$	\$
		Other _____	____Hours	\$	\$
<b>Subtotal of Hourly Labor</b>			N/A	N/A	\$
<b>B. Materials and Subcontracts:</b> <i>The Contractor will be reimbursed for the cost of materials and subcontracts in accordance with FAR clause 52.237-7.</i>					
		Estimated Cost (not to exceed)			\$20,000
		Material Handling Fee (enter percentage)			_____%
<p>(For price evaluation purposes only, the Government will assume the cost of materials to be \$20,000 which will be multiplied by the offeror's proposed handling fee, combined with the estimated cost of materials and the result will be added to the offerors total price.)            Example: \$20,000 + [20,000 x 10%] = \$22,000</p>					

**SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS (Con't)**

ITEM #	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
Third Option Year: April 1, 2007 through March 31, 2008 –					
008	(a) Debris Disposal Services - 2007 Season -	EST. 2,000	ton	_____	_____
	(b) Operate and Maintain Debris Collection Facilities - April through November	8	month	_____	_____
	(c) Monitor Facilities & Equipment - December through March	4	month	_____	_____

009 Schedule Table for Time and Materials Work Items:

TIME AND MATERIAL WORK ITEMS					
Item No.	Section	Work or Material	Quantity and Unit	Unit Price	Amount
009	C.4	Miscellaneous Work of Existing Unknown Requirements (NOT TO EXCEED \$35,000 for item #009) See 52.232-7	N/A	N/A	
<b>A. Fully-loaded hourly labor rates for:</b>					
		Laborer	30	\$	\$
		Heavy Equipment Operator	20	\$	\$
OFFERORS: You may propose additional labor categories here. Please fill in the category title, the estimated number of hours, and the pricing information:					
		Other _____	____ Hours	\$	\$
		Other _____	____ Hours	\$	\$
		Other _____	____ Hours	\$	\$
		Other _____	____ Hours	\$	\$
<b>Subtotal of Hourly Labor</b>			N/A	N/A	\$
<b>B. Materials and Subcontracts:</b> <i>The Contractor will be reimbursed for the cost of materials and subcontracts in accordance with FAR clause 52.237-7.</i>					
Estimated Cost (not to exceed)					\$20,000
Material Handling Fee (enter percentage)					_____%
<p>(For price evaluation purposes only, the Government will assume the cost of materials to be \$20,000 which will be multiplied by the offeror's proposed handling fee, combined with the estimated cost of materials and the result will be added to the offerors total price.)            Example: \$20,000 + [20,000 x 10%] = \$22,000</p>					

**SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS (Con't)**

ITEM #	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
Fourth and Final Option Year: April 1, 2008 through March 31, 2009 –					
010	(a) Debris Disposal Services - 2008 Season -	EST. 2,000	ton	_____	_____
	(b) Operate and Maintain Debris Collection Facilities - April through November	8	month	_____	_____
	(c) Monitor Facilities & Equipment - December through March	4	month	_____	_____

011 Schedule Table for Time and Materials Work Items:

TIME AND MATERIAL WORK ITEMS					
Item No.	Section	Work or Material	Quantity and Unit	Unit Price	Amount
011	C.4	Miscellaneous Work of Existing Unknown Requirements (NOT TO EXCEED \$35,000 for item #011) See 52.232-7	N/A	N/A	\$
<b>A. Fully-loaded hourly labor rates for:</b>					
		Laborer	30	\$	\$
		Heavy Equipment Operator	20	\$	\$
OFFERORS: You may propose additional labor categories here. Please fill in the category title, the estimated number of hours, and the pricing information:					
		Other _____	____Hours	\$	\$
		Other _____	____Hours	\$	\$
		Other _____	____Hours	\$	\$
		Other _____	____Hours	\$	\$
<b>Subtotal of Hourly Labor</b>			N/A	N/A	\$
<b>B. Materials and Subcontracts:</b> <i>The Contractor will be reimbursed for the cost of materials and subcontracts in accordance with FAR clause 52.237-7.</i>					
Estimated Cost (not to exceed)					\$20,000
Material Handling Fee (enter percentage)					_____%
<p>(For price evaluation purposes only, the Government will assume the cost of materials to be \$20,000 which will be multiplied by the offeror's proposed handling fee, combined with the estimated cost of materials and the result will be added to the offerors total price.)            Example: \$20,000 + [20,000 x 10%] = \$22,000</p>					

**Grand Total for CLINs 001 - 011**      \$ \_\_\_\_\_

## **SECTION C - DESCRIPTION / SPECIFICATIONS**

### **C.1 GENERAL**

a. Reclamation has debris collection facilities and a disposal facility on Franklin D. Roosevelt Lake (the part of the Columbia River behind the Grand Coulee Dam), near the town of Kettle Falls, Washington. The collection facilities are currently located at the mouth of the Kettle River (at approximately River Mile - 707), and at China Bar (at approximately River Mile - 724) and the disposal facility is located at Boise Cove, downstream from the mouth of the Kettle River (at approximately River Mile - 702). The collection facilities capture floating debris which principally consists of logs, snags, and slash from up river logging, uprooted trees and brush from riverbank undercutting, and miscellaneous floating debris, and garbage. Debris from the collection facilities is "bagged" with log booms and towed to Boise Cove. A concrete access ramp at Boise Cove allows access to the debris for removal from the lake, depending on the lake level. The debris is then processed for final disposal. This contract is for the collection and disposal of debris.

b. Annual regulation of FDR Lake will affect the water depth in the China Bar, Kettle River, and Boise Cove areas and at times a portion of these facilities will be exposed or in relatively shallow water. The Contractor is also cautioned that, if critical runoff conditions should prevail in the Columbia River drainage system, draw down of the reservoir to an unusually low level could be necessary.

c. Disposal methods must meet all State of Washington, local and Federal environmental regulations. If final disposition of the debris is outside the State of Washington, compliance with environmental regulations of the receiving location must also be met.

d. The Contractor shall furnish all necessary equipment, labor, supervision, parts, materials, supplies, and services needed to dispose of the collected debris and maintain the facilities as detailed in this specification.

e. The period of this contract is from the date of award through March 31, 2005, with four, one-year options to extend the period of services. Option year periods are from April 1, through March 31, of the following year. The Contractor shall complete disposal of all collected debris no later than November 30, of each year, unless an extension of time is approved by the Contracting Officer (CO) or the Contracting Officer's Representative (COR).

f. The Government shall inspect the facilities, and the river, at minimum once every two weeks during the operation and maintenance period. The Government may perform spot checks of the facilities during the monitoring period. The Government may accept verbal complaints from local inhabitants with Government inspection for those complaints determined to be significant to the performance of the contract.

## **C.2. OPERATION AND MAINTENANCE OF DEBRIS COLLECTION FACILITIES**

### **a. General**

(1) During the contract performance period, Reclamation will turn over to the Contractor all facilities for debris collection and disposal activities on Lake Roosevelt at China Bar, the mouth of the Kettle River, and Boise Cove. The existing log booms, cables, anchors, chains, buoys, navigational lights, buildings, utilities, roads, and designated tractors, and barges will be assigned to the Contractor for his use in the debris removal program on Lake Roosevelt.

(2) The Contractor shall manage the debris collection facilities at China Bar, and the Kettle River, and the debris disposal facility at Boise Cove efficiently and effectively in order to prevent debris from entering and floating on the waters of Franklin D. Roosevelt Lake and the Lake Roosevelt National Recreational Area.

### **b. Collection and Disposal Facilities**

(1) China Bar Facility (Located at Columbia River Mile - 724)

(a) The debris collection facilities at China Bar consist of a 2,070-foot main earth dike, a 1,600-foot auxiliary earth dike, and a number of log booms. A double string of boom logs, each boom log approximately 33 feet long, make up the 2,500-foot North Main Boom, a double string of boom logs 950 feet long make up the Middle Main Boom, and a single string of boom logs 2,500 feet long make up the South Main Boom. The North, Middle, and South log booms form a continuous string of boom logs that remove debris from the current of the river in a shearing action and together are referred to as the shear boom.

In addition, there is one holding area log boom for storage of debris diverted by the main shear boom and an additional safety log boom to insure that debris doesn't escape the collection facility.

Also at this facility are storage buildings, a small work shop, basic sanitary facilities, and a small building for day-time crew requirements.

(b) Based on a number of measurements at China Bar, with a 24-hour average discharge of 230,000 cubic feet per second at Grand Coulee Dam, and a forebay elevation of 1289 feet above sea level, the current velocity at China Bar was observed to be approximately 8.5 feet per second or about 5 knots.

During average spring lake-level conditions the main surface current is such that the bulk of the debris can be diverted from the river on a rising reservoir and collected in the holding areas by tending and manipulating the log booms.

(c) The critical period for operations and maintenance of the collection facilities at China Bar is when the flow of the Columbia River surpasses 100,000 cubic feet per second and the lake surface elevation is below 1285 feet, (USBR datum). This period normally occurs from about the middle or latter part of March until about the middle of July, depending upon weather conditions over the river drainage area.

Critical conditions begin to occur when the Lake is lowered, in anticipation of a high spring run-off, to approximately elevation 1276 feet and below, which does not allow debris to be diverted out of the river and into the collection area. The high run-off currents and the debris accumulation against the shear boom can cause a break in the log boom and debris to not be collected. Debris held in the collection area will be beached when the level of the lake drops below elevation 1268 feet.

(d) This facility continues to collect debris through out the year. However, after the initial spring debris collection period is over, approximately mid-August, the debris collection can be towed to the Boise Cove facility for disposal. The COR will advise the Contractor when the initial debris collection period is over.

(2) Kettle River Facility (located at Columbia River Mile - 707)

(a) The debris collection boom is located in FDR Lake at the mouth of the Kettle River, and consists of single strings of log booms, totaling approximately 4,500 feet long, spanning the mouth of the Kettle River. There is a permanent opening in the log boom for public navigation when the lake elevation is above approximately 1255 feet. An additional single string of boom logs, approximately 2,788 feet long, forms a liner along the main section of the collection area of the log boom for additional strength to hold collected debris, encircles the debris to hold it in place after the collection period and is used to tow the debris to the disposal site.

(b) Very little debris flows from the Kettle River when the spring run-off is below 10,000 cfs and is very heavy when the flow is 18,000 cfs or more. The spring run-off from the Kettle River begins to subside in approximately mid-July.

(c) The critical period of operation and maintenance of the collection facilities at the Kettle River is when the flow of the Kettle River surpasses 10,000 cubic feet per second. This period normally occurs from about the middle of May until the end of June.

Critical conditions occur when FDR Lake is lowered, in anticipation of high run-off, and the log boom is in shallow water or even a portion is beached. This creates a condition where the strength of the current from the Kettle River is not dissipated or reduced by the higher water level of the lake. The debris then collects against the log boom with such force that the debris is either pushed under the log boom and liner or the log boom breaks and causes a loss of debris.

(d) After the collection period is over the debris is then towed to Boise Cove for disposal. The COR will advise the Contractor when the collection period is over.

(3) Boise Cove Disposal Facility (located at Columbia River, Mile - 702)

(a) The debris disposal facility at Boise Cove is located on Lake Roosevelt, and is adjacent to Boise Cascade Corp.'s log storage yard. It consists of a log boom, comprised of approximately 45 boom logs in a single string, inclosing a majority of the river cove. This log boom is used to store bagged debris on the inside and moorage of Government and Contractor flotilla around the perimeter. A previously installed concrete access ramp, at the cove, is used as a work ramp for debris removal during debris disposal operations.

(b) The access ramp at this facility must have a lake elevation of approximately 1275 feet, or above, for debris removal equipment to be able to reach and remove debris from the lake.

(c) Critical conditions occur when FDR Lake is lowered, 1270 feet and below, which reduces the capacity or area inside the log boom, the shoreline becomes very steep creating difficult access to equipment moored on the log boom or for removing debris. Also, this area is only partially protected from the wind, and high winds can and do cause the log boom and mooring lines, to occasionally break.

### **C.3. CONTRACTOR RESPONSIBILITIES**

a. While the Government makes no guarantee of water levels, river flows, the amount of debris, or the timetable for collection and disposal, a normal year will require continuous attention by the Contractor to the changing river currents and the need to maintain and manipulate the log booms, anchors and buoys for efficient debris collection and debris breach protection, check moorage of flotilla, and maintain the navigational lights. Usually, the Contractor should prepare for spring runoff in March/April. The Operation and Maintenance period of this contract, debris collection and disposal and facility and equipment maintenance, is from April 1, through November 30, of each applicable contract year.

b. The Contractor shall collect and tow the debris from Reclamation's debris collection facilities to the Boise Cove disposal site at minimum once per operating season. The debris shall be collected, towed, and restrained by existing log boom systems furnished by the Government.

Quality Standard: The Contractor shall manipulate the log booms to capture the maximum amount of debris at China Bar and the Kettle River to minimize the amount of debris floating in FDR Lake and at Grand Coulee Dam. The Contractor shall tow collected debris to Boise Cove at minimum once per operating season. The Contractor must notify the COR, as soon as the

decision is made, of the date the debris will be moved to Boise Cove (but no later than 24 hours prior to date the move is initiated).

If the debris is not towed by the specified date, 1/30 of the operation and maintenance fee shall be deducted from the monthly maintenance and operation price for each day exceeding that date.

c. The Contractor shall monitor (inspect) the condition of, perform preventative maintenance service, and replace as needed, the log booms, connecting cables, anchors, boom chains, navigation buoys, and lights, including painting the buoys once per year in accordance with Coast Guard regulations. The batteries in the lights shall be replaced at minimum once every four years, or sooner as needed.

Quality Standard: The log boom system shall not have any breaks in the boom lines, or contain any weak areas which allow loss of debris. The COR shall be notified within four hours of discovery of any boom break and/or debris breaches, or any conditions which may cause a boom break or debris breach, or possible damage to Government Furnished Property (GFP). The Contractor and COR shall examine the break together and attempt to determine the reason for the break and/or loss of debris. The contractor shall make a reasonable effort to collect and contain the debris that escaped from the log booms.

The four navigation lights shall have flash intervals in full compliance with Coast Guard regulations. The navigation lights shall be fully functional at all times.

A reduction of 1/30 of the monthly operation and maintenance price shall be taken for each day the navigational lights are not functioning. The Contractor shall repair the boom log system and any damage to Government property caused by boom breaks or debris breaches which were caused due to lack of preventive maintenance, within 24 hours after discovery of the break or breach, at the Contractor's expense.

A reduction of 1/30 of the monthly operation and maintenance price shall be taken for each day the break(s) is not repaired after the initial 24 hour period (see above) or if low water and or strong currents create conditions that won't allow immediate repair, by a date agreed to by both the Contractor and the COR. The cost of re-collecting the debris, if the break was caused by inadequate maintenance, shall be at the Contractor's expense.

d. The Contractor shall recapture floating debris that escapes from functional log booms. The Contractor shall notify the COR within 4 hours of loss of debris. Recovery shall include debris on the river up to and including the mouth of the Colville River.

Quality Standard: Efforts to re-collect floating debris in a visual size of 20' x 20' or greater shall begin within 24 hours of loss of debris. A reduction in the contract price of \$200 will be

deducted for each bundle of 20' x 20' or greater debris that is not re-collected if the COR determines it should have been re-collected.

e. The Contractor shall secure collected debris for protection from weather and high run-off conditions as necessary. Severe weather and high run-off with low lake levels make it difficult to secure debris. If this situation occurs and the COR agrees that debris couldn't be secured the Contractor will not be responsible for debris lost in this manner. If breaks in the log boom are determined to have occurred due to improper maintenance which caused loss of debris the Contractor will be responsible for recovery of this debris at their expense.

Quality Standard: All collected debris shall remain secured.

f. Debris shall be disposed of by the Contractor. All material suitable for disposal becomes the property of the Contractor. All debris shall be removed from Government property. All untreated/uncontaminated wood debris shall be disposed of in a manner pre-approved by the Government. For material unsuited for recycling, disposal shall be via landfill.

Quality Standard: All debris is removed from the Government facilities. The Contractor shall provide proof of disposal (for example: copy of landfill bill, certified weight certificate, or receipt of sale for recyclable products). Only debris pre-approved by the COR may remain on site after November 30 of each year. This debris will be added to the next year's disposal.

Debris that remains on site after the operation and maintenance period and not approved by the COR, shall be weighed by the Government and a reduction equal to the amount the Government would pay for disposal per ton will be deducted from the contract.

g. The Contractor shall remove contaminates such as, but not limited to, plastics (e.g. pop bottles, miscellaneous containers), metals (e.g., drums, vehicle tires and wheels), paper (e.g., garbage, wrappers), and painted and/or treated (e.g., soaked in a wood preservative) or metal contaminated (e.g., nails, spikes or bolts) wood debris, and rocks.

Treated wood debris such as, but not limited to dock ends, rafts, telephone poles, and wood debris containing metals shall be suspected of containing wood preservatives or lead based paint residues (both suspected hazardous wastes). Such materials shall not be recycled, or land filled (land filling of some materials is allowed if legally accepted by the Land fill). Rather, the COR shall direct appropriate disposal and the Contracting Officer shall provide a Contract Modification to cover disposal of suspected hazardous wastes. Therefore, the Contractor shall not include hazardous waste disposal in Section B - Supplies or Services and Price/Costs.

Quality Standard: The COR shall be notified of suspected hazardous wastes within 24 hours of possible wastes being discovered. All contaminated materials and treated wood debris shall be disposed of in an approved method and in accordance with the contract modification (proof of disposal shall be included with the daily reports and/or monthly billings).

If disposed of without notifying the COR the cost of the disposal will not be reimbursed by the Government.

h. All material not suitable for recycling, shall be disposed of in accordance with the appropriate federal, state, and local regulations, except:

(1) Known hazardous wastes, as determined by content labels shall not be land filled. The COR shall be informed about such material and shall arrange for the disposal of these hazardous wastes. The Contractor shall not dispose of these hazardous wastes without written permission from the Contracting Officer. For metal and plastic containers that list contents that the Contractor is unsure whether or not are hazardous or dangerous waste, these containers shall be set aside and the COR shall be informed about the contents. If the material is later determined not to be a hazardous waste the COR may direct that this material be disposed of in accordance with the appropriate regulation(s).

(2) The Contractor is not required to test painted and treated wood products for the existence of hazardous wastes. This material shall be disposed by land filling.

(3) Any other materials rejected by the landfill shall be set aside for disposal by the COR.

(4) Animal remains shall be disposed of in accordance with state and local regulations.

(5) Human remains discovered in the debris will be reported immediately to the Stevens County Sheriff Dept. and assistance given to the recovery process.

Quality Standard: All debris shall be disposed of in an appropriate manner. Daily reports and/or monthly billings supported by landfill and other facility invoices, weight certificates, or receipts, record disposal of materials.

For those materials not disposed of properly the disposal costs shall be at the Contractor's expense.

i. Each applicable contract year, after the operation and maintenance period, the Contractor shall moor the Government furnished barges, and monitor, on a weekly basis, Government facilities, log boom systems, and Government furnished property and equipment during the off season, December 1, through March 31, of the following year, and respond to any problems that require action by the Contractor to protect Government facilities and equipment or repair log boom systems, and report such problems and the Contractor's action to the COR.

Quality Standard: Spot checks by the COR will find the facilities are in good condition and no damage or loss of property has occurred.

A reduction of 1/30 of the monthly monitoring/inspection price shall be deducted for each day repairs are not accomplished after the COR discovers damage or lost property. Repairs determined to be due to inadequate monitoring or inadequate repair shall be deducted from the monthly monitoring/inspection price.

j. Maintenance of Government furnished equipment. The Contractor shall operate, service, fuel, and provide routine maintenance, and winterization for Government furnished equipment and include such costs in the schedule prices. Service and maintenance of Government equipment shall be in accordance with manufacturer's recommendation but no less frequently than once a month during periods of operation.

Quality Standard: Government furnished equipment will remain in the same condition it was in when the Government turned the equipment over to the Contractor for use on this contract, except for normal wear and tear.

Any additional repairs that occur due to inadequate maintenance or excessive wear and tear shall be deducted from the Contractor's contract price.

k. The Contractor shall fabricate new boom logs in accordance with Drawing No. 222-117-11991 (revised 8-27-97), including new chain plates, spikes, boom chains, and installation into the log boom system and the removal/repair of the replaced boom log(s)—see subparagraph c. above. The Contractor shall provide approximately 30 boom logs per year, not to exceed a total of 150 boom logs for the base year plus four option years.

Quality Standard: The Contractor shall complete fabrication of the new boom logs in order to maintain the log boom system without any delays, breaks, or loss of debris.

If the log boom system is compromised due to late delivery and/or installation of new boom logs a reduction of 50% of the log boom price shall be deducted from the contract price.

#### **C.4. TIME AND MATERIALS**

a. The Contractor is required to perform maintenance of the roads, buildings, and utilities at the collection and disposal facilities, within the capabilities of Government provided equipment, and Contractor equipment which is on site for debris collection and disposal. Maintenance shall include the access road and approach to the access ramp at the Boise Cove disposal site.

b. The contract price shall not include additional materials, supplies or rental equipment necessary to perform such maintenance work. Labor, materials, supplies, or rental equipment

supplied or purchased by the Contractor shall be paid in accordance with the Time and Materials Payment clause. Additional materials, supplies, and equipment necessary to perform such maintenance work exceeding \$1,500.00 shall be approved by the COR prior to purchase.

Quality Standard: COR spot checks will verify the facilities meet required safety standards and are maintained at minimum, in as good a condition, as it was when turned over to the Contractor for the initial work period of this contract. Repairs exceeding \$1,500.00 that were not approved by the COR shall be at the Contractor's expense.

c. Extraordinary repair of Government Furnished Property: If the Government furnished property/equipment requires repairs, the Contractor shall inform the COR about the nature of the repairs and get COR approval prior to obtaining repair services. The cost of such repair services shall be borne by the Government in accordance with the Time and Materials clause.

Quality Standard: The property/equipment repaired shall be in good working condition after repair(s) have been effected.

d. When directed by the CO or the COR, the Contractor shall dispose of debris collected at Grand Coulee Dam in the same manner as debris collected at China Bar or the Kettle River facilities. The Contractor shall be reimbursed in accordance with the Time and Material rates for towing debris from the Grand Coulee Dam to Boise Cove, and maintaining the log boom at Grand Coulee Dam when so directed. Disposal of the debris shall be at the rates specified under the applicable disposal services contract line item.

Quality Standard: Debris will be towed from the Dam to Boise Cove and disposed of in a time frame specified by the COR.

## **C.5. SERVICE REQUIREMENTS**

a. Initial contract period.-- The initial Operation and Maintenance period of the contract shall run from April 1, 2004, or the contract award date, through November 30, 2004, and the monitoring period shall run from December 1, 2004, through March 31, 2005. The Contractor shall stop work once the amount of funding specified contract clause "Limitation of Funds (Fixed-Price Contract)", has been reached. The Contractor shall notify the COR when 80% of the funds have been used.

The Contractor shall dispose of any debris carried over from the previous year(s). The Contractor shall stop disposal work once the amount of funding specified in "Limitation of Funds (Fixed-Price Contract)" clause has been reached, unless additional funds have been added by contract modification. The Contractor shall notify the COR when 80% of the funds have been used.

b. Option periods.-- The calendar dates for each contract performance period will remain as specified in C.5.a. above. The optional performance periods are as follows:

First Option Period:	April 1, 2005 through March 31, 2006
Second Option Period:	April 1, 2006 through March 31, 2007
Third Option Period:	April 1, 2007 through March 31, 2008
Fourth Option Period:	April 1, 2008 through March 31, 2009

## C.6. MEASUREMENT AND PAYMENT

a. Measurement.-- Each load of material that is taken to the landfill, and material used in other recyclable procedures, shall be weighed at a certified, or mutually agreed upon, scales and an official copy of each load's weight, including tare weights, will be obtained and provided to the Government prior to payment. The net green tons of the recyclable or land filled material will be based on the total weight, minus the weight of the truck, driver, fuel, and trailer.

b. Payment. - Payment for disposal of debris, includes all disposal costs as detailed above, and shall be made on the basis of the actual amount, in green tons, of disposed of materials that is land filled or set aside for other recyclable procedures.

Maintenance and repairs as specified in C.4., above, shall be paid in accordance with the time and materials payment clause in this contract.

c. All daily work log reports shall be submitted to the COR in a timely manner with all payment requests but no later than once per month. Reports are due within 5 working days after the end of each month. **No payment for any services shall be made until all daily work logs are submitted for each month worked.**

d. Detailed invoice(s) must be submitted on a monthly basis. All supporting work logs and equipment logs necessary to document the invoice(s) must be received as detailed in this specification before payment can be processed.

## C.7. SAFETY

a. The Contractor shall not require any employee to work in surroundings or working conditions which are unsanitary, hazardous, or dangerous to health or safety.

b. The Contractor shall comply with the Department of Labor and Health Regulations published under 29 CFR 1910 and 1926, Occupational Safety and Health Act of 1970, or an approved State plan, pertinent Coast Guard Regulations, and with the Bureau of Reclamation Safety and Health Standards, the more stringent provisions shall prevail.

c. The Contractor shall: (1) have a safety program approved by the Contracting Officer prior to commencement of work; (2) provide for weekly 5-minute "tool-box" safety meetings, conducted by the Contractor's foreman and attended by all employees at the worksite; (3) conduct regularly scheduled safety meetings at least monthly for all levels of supervision; and (4) designate a competent supervisory employee to carry out the contractor's accident prevention program.

d. The Contractor is responsible for being cognizant of and ensuring compliance with all requirements of the Bureau's Safety and Health Standards, OSHA's Safety Regulations, pertinent Coast Guard regulations, and all State safety and health regulations. Such responsibilities shall apply to his operations and subcontractor operations. When safety or health violations are called to his attention by the CO or the COR, the Contractor shall immediately correct the condition to which attention has been directed. Such notice, either orally or in writing, when served on the Contractor or his representatives shall be deemed sufficient.

e. In the event the Contractor fails or refuses to promptly comply with the compliance directive issued under Subparagraph "d" above, the CO or the COR may issue an order to suspend all or any part of the work. During any suspension period, the Government may have the required services performed by other sources and back charge any excess costs associated thereon to the Contractor's monthly billing(s). When satisfactory corrective action is taken, an order to resume work will be issued. The Contractor shall not be entitled to any extension of time nor to any claim for damage or to excess costs by reason of either the directive or the suspension order. Failure of the CO or the COR to order discontinuance of any or all of the Contractor's operations shall not relieve the Contractor of his responsibility for the safety of personnel and property.

f. The Contractor shall maintain an accurate record of, and shall report to the COR in the manner prescribed by the COR, all cases of death, occupational diseases, or traumatic injury to employees or the public involved and property damage by accident in excess of \$1,000 per incident to the performance of work under this contract. The Contractor shall, by the fifth working day of the following month, furnish the COR with a report showing the number of employees, man-hours worked, safety meetings held, and number of injuries for the previous month.

g. All work on or in the water shall be adequately staffed so that there are backup personnel and equipment available in the event of an emergency.

h. In the event there is a conflict between the requirements of these paragraphs and any requirements of the U.S. Department of Labor, the more stringent requirement will prevail.

## **C.8. SPECIAL CONTRACT CONDITIONS AND REQUIREMENTS**

a. General - In addition to the other requirements of this contract, the following paragraphs shall be specifically applicable for all work performed under this contract and the cost of work described in these paragraphs shall be included in the prices offered in the schedule.

b. Superintendence by Contractor - If the Contractor does not give personal superintendence to the work at all times during its progress, he shall provide in writing, the name of the supervisor(s) fully authorized to act in his behalf. Said supervisor shall be an employee of the Contractor, be on the Contractor's payroll, and shall give daily personal supervision to the work, including coordinating, directing, and expediting all work under the contract. All directions given to such supervisor(s) shall be considered as given to the Contractor and shall be binding on the Contractor.

(1) The Contractor and supervisory personnel shall be properly U.S. Coast Guard Certified under the Code of Federal Regulations - Title 46 (with all annotations), for the geographic area and for the gross tonnage of the vessel(s) required to be used.

(2) The Contractor will be required to provide documented tugboat operating experience for handling boom logs, for any employee given daily personal supervision, and those persons shall demonstrate adequate knowledge of operation of Government furnished equipment, marine work, all other equipment that will be used on this contract, tools, techniques, and related activities, and shall be able to recognize situations or circumstances under which manipulation of the log boom systems, to more efficiently collect or retain debris, is necessary.

c. Employee Qualifications - The Contractor shall ensure, and document, that all employees are trained, capable, and demonstrate adequate knowledge of: marine activities, operation of the Government provided equipment, operation of tools, equipment, safety and first aid, and techniques necessary to completely perform the work. In the acceptance or rejection of this work by the Government no allowance will be made for lack of skill of the personnel.

d. Required Contractor Provided Equipment - The Contractor shall provide, and have available on a 24 hour basis, adequate equipment to perform the duties of this contract.

e. Conditions Affecting the Work - The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the Government. The Government assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the Government are expressly stated in the contract.

f. Other Contracts - The Government may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Government employees and fit his own work to such additional work as may be directed by the CO. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by Government employees.

g. Contractor's Campsite - The Contractor will be permitted to use Government lands as designated by the COR, at the China Bar location, for residential purposes, construction plant, storage, and incidental purposes during the period of the contract, but such use shall not interfere with any part of the work included herein, the work of other contractors, or of any other activities by the Government. The Contractor shall remove his facilities from the designated site within 10 days after expiration or termination of the contract. The China Bar debris collection facilities are located within the Lake Roosevelt National Recreational Area, administered by the National Park Service, and the Contractor's campsite must meet their regulations governing sanitation, fire prevention, and general appearance.

h. Cleaning Up - At completion or termination of the contract, the Contractor shall remove from Government facilities, all tools and equipment, buildings, rubbish, unused materials, and other like material belonging to the Contractor. All work areas and facilities shall be left in a neat manner conforming to the natural appearance of the landscape, and as provided elsewhere in these specifications. In the event of the Contractor's failure to do so, the same may be performed by the Government at the expense of the Contractor.

i. Pre-work Meeting - A pre-work meeting shall be held at the Grand Coulee Power Office Administration Building at a time mutually agreed to by the Contractor and the COR. The purpose will be to review the contract and the work to be performed. In addition, the Contractor will be required to submit to the COR the following listed items:

- (1) The list of all employees who will be working on the contract.
- (2) Complete work schedules.
- (3) Proposed safety program for review and approval.
- (4) Proof of insurance as required by FAR clause 52.228-5, "Insurance-Work on a Government Installation", and DIAR clause 1452.228-70, "Liability Insurance-Department of Interior".
- (5) Listing of all Contractor furnished equipment for use in the performance of the contract. The Contractor shall verify the listed equipment will be available for on-site work when contract performance is scheduled to begin.

## **C. 9. GOVERNMENT-FURNISHED PROPERTY/EQUIPMENT**

a. Upon termination of this contract, the Contractor shall return the Government furnished property and equipment to the location where it was received initially (unless directed otherwise by the COR), and in good serviceable and usable condition, fair wear and tear excepted.

b. The Contractor shall be responsible for Government-furnished property in accordance with Section I, clause 52.245-2 Government Property (Fixed-Price Contracts)(June 2003). Acts of vandalism or theft of Government property shall be reported to the COR within 4 hours of discovery of such acts.

c. The Government will provide the following equipment:

<u>PCN</u>	<u>Description</u>	<u>Year New</u>	<u>Est. Orig. Cost</u>	<u>Appraised Value</u>	<u>Location</u>
0081974	Barge	1950	\$82,083	?	Boise Cove
0087149	8415.38 Tractor Crawler, Euclid, Model 8246, S/N 47438-AA	1969	\$60,000	\$70,000	China Bar
0081976	705.29 Barge, Anchor, 46' x 20' Diesel	1964	\$68,000	\$50,000	Boise Cove
0087182	87182 Trailer, 2 wheel, w/500 gal. tank	1980	\$350	\$251	China Bar
1000086	Radio, Transceiver Motorola, S/N 8369569	1991	\$563	?	China Bar Pump House
1003519	Radio, Transceiver Motorola, S/N 428ARUD933	1991	\$485	?	Anchor Barge Boise Cove

(1) Barge - This barge is fabricated from smaller barge segments and is approximately 32 feet wide and 72 feet long. Due to the barge's age, some extra maintenance may be required and it should be inspected and operated accordingly. This equipment does not have the ability to move under its own power.

(2) Anchor Barge - A vessel 20 ft. wide by 42 ft. long, powered by a diesel engine, with a stationary boom attached. Designed to recover and set anchors. Manufactured in 1964 it also requires extra inspections and should be operated and inspected accordingly.

(3) Euclid Dozer - A 1969 Model 8246 Crawler Tractor, and because of its age, May require some extra maintenance, and should be inspected and operated accordingly.

d. In the event any of the above equipment fails or is worn out during the period of this contract, the Contractor shall notify the COR within 24 hours of the discovery of

the problem. The Government will be responsible for deciding whether to repair or replace the equipment.

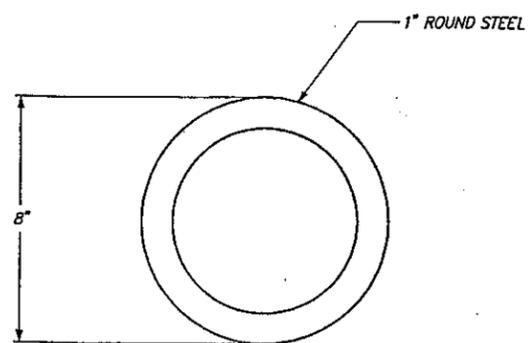
e. The existing Government log booms, chains, plates, cables, anchors, navigational lights, building, utilities, roads, and other Government property, will be made available for the Contractor's use, in the performance of this contract. Operation, routine maintenance, and routine repair shall be included in the Contractor's schedule prices. See additional information in C.3. and 4., above.

#### **C.10. OPERATING RECORD**

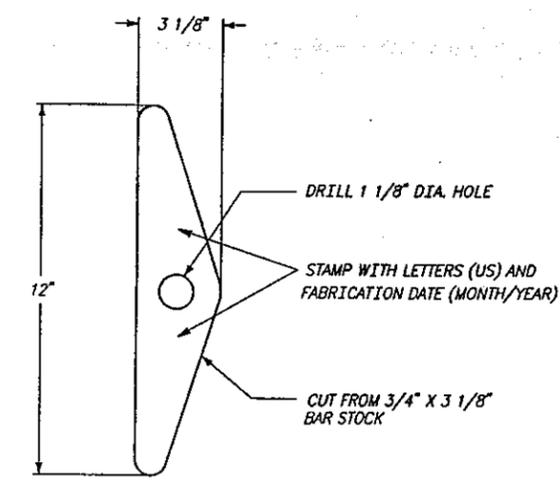
a. The Contractor shall prepare a daily work log each day any work is performed under the contract. The log shall show, at a minimum: Description of work performed; employees on the job; date; time of beginning to end of service; repair or replacement of any of the installed facilities such as boom logs, chains, buoys, anchor lines, equipment maintenance, navigational lights and other necessary equipment; and weight of green tonnage. The daily work logs may be read at any time by the COR. The Contractor shall furnish the COR one copy of logs for each month within 5 working days after the end of that month.

b. No payments for any services shall be made until all daily work logs are submitted for each month worked.

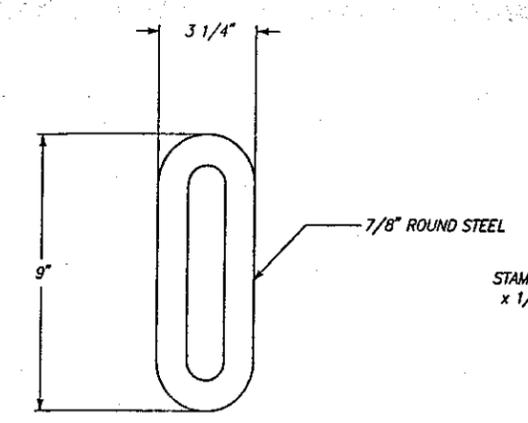
c. In addition, the Contractor will maintain a separate record for each piece of Government equipment which records the date, operating hours, description of services, maintenance and repairs performed. These records may be inspected at any time by the COR and must be furnished in a complete and orderly fashion to the COR within 5 working days after field work under this contract has been performed.



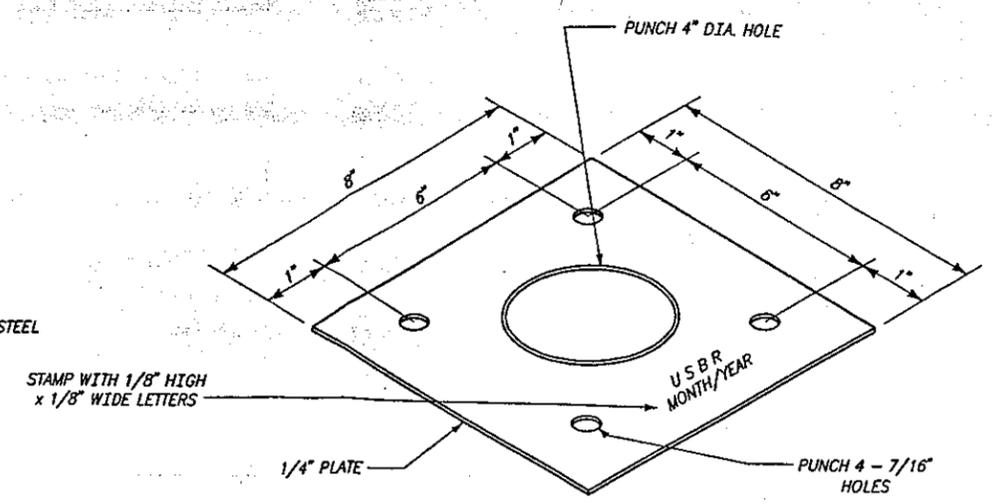
**VIEW A**  
RING  
A.S.T.M A36



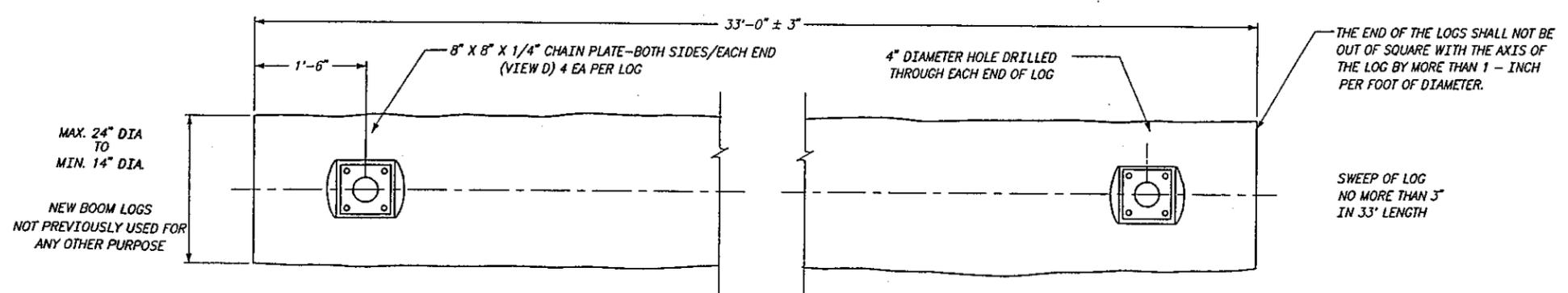
**VIEW B**  
TOGGLE  
FEDERAL SPECIFICATION QQ-S-741D



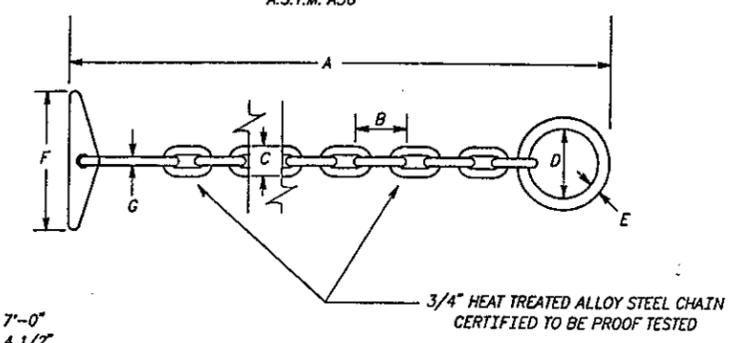
**VIEW C**  
TOGGLE LINK  
A.S.T.M A36



**VIEW D**  
CHAIN PLATE  
A.S.T.M A36

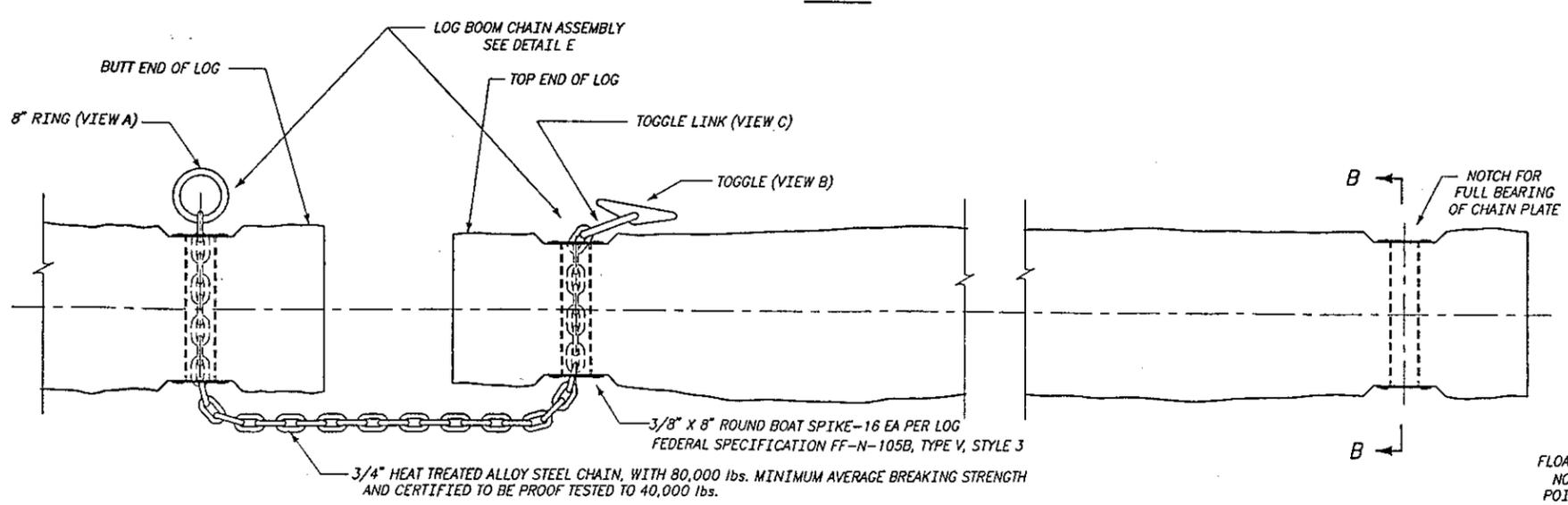


**PLAN**

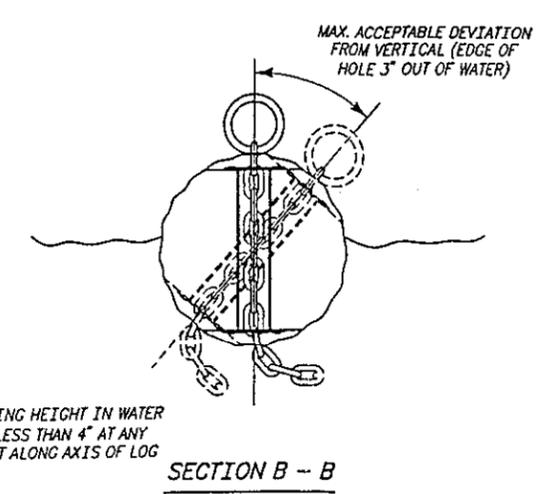


- A = 7'-0"
- B = 4 1/2"
- C = 2 5/8"
- D = 6"
- E = 1"
- F = 12" - TOGGLE
- G = 7/8" - TOGGLE LINK

**DETAIL E**  
LOG BOOM CHAIN ASSEMBLY  
PACIFIC COAST PATTERN  
MINIMUM AVERAGE BREAKING  
STRENGTH OF ASSEMBLY 80,000 lbs.



**ELEVATION**



**SECTION B - B**

**NOTES**

1. Branch stubs and overgrown knots protruding above the normal surface of the log shall be trimmed closely.

THIS DRAWING SUPERCEDES DRAWING 222-117-2053.

REVISED	DATE	BY	REASON
117	8-27-97	A.C.W.	REVISED (M.M.B.)
117	09-09-96	A.C.W.	REVISED (C.H.P.)
117	09-03-96	A.C.W.	REVISED (C.H.P.)
117	08-20-96	A.C.W.	REVISED (C.H.P.)
117	07-16-96	A.C.W.	REVISED (C.H.P.)
117	11-5-93	A.C.W.	REVISED (M.M.B.)
117	12-17-92	D.J.B.	REVISED (M.M.B.)
117		D.J.B.	REVISED (M.M.B.)

ALWAYS THINK SAFETY

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
COLUMBIA BASIN PROJECT - WASHINGTON  
GRAND COULEE PROJECT OFFICE  
**GRAND COULEE DAM**  
LAKE ROOSEVELT TRASH BOOM  
LOG BOOM ASSEMBLY  
PLAN, SECTION AND DETAILS

DESIGNED P.M.M. TECH. APPROVAL D.D. JOHNSON  
DRAWN J.W.B. SUBMITTED E.J. SHARKEY  
CHECKED L.P.B. ADMIN. APPROVED A.F. DARLAND

CADD SYSTEM AutoCAD 12.01 CADD FILENAME P11991.DWG DATE AND TIME PLOTTED NOVEMBER 8, 1993 07:53  
GRAND COULEE, WA NOVEMBER 30, 1990 222-117-11991

**SECTION D - PACKAGING AND MARKING**

NO CLAUSES APPLICABLE TO THIS SECTION.

## **SECTION E - INSPECTION AND ACCEPTANCE**

### **(S) E.1. 52.246-4 INSPECTION OF SERVICES--FIXED-PRICE (AUG 1996)**

(a) Definitions. "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service or (2) terminate the contract for default.

### **(T) E.2. 52.246-6 INSPECTION--TIME-AND-MATERIAL AND LABOR-HOUR (MAY 2001)**

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

"Contractor's managerial personnel" means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location where the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

"Materials" includes data when the contract does not include the Warranty of Data clause.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, work, and services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the contract, the Government shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under the Payments Under Time-and-Materials and Labor-hour Contracts clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may--

(i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(ii) Terminate this contract for default.

(2) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(j) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(k) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

## **SECTION F - DELIVERIES OR PERFORMANCE**

### **F.1. 52.242-15 STOP-WORK ORDER (AUG 1989)**

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. 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. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, 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 or the period of the order or any extension thereof expires, 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 the 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 the claim submitted 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.

### **F.2. PERIOD OF PERFORMANCE**

a. The period of performance for services shall be as shown in Section B of the contract.

b. The “Operation and Maintenance Period” is defined as April 1 through November 30 of the applicable calendar year.

c. The “Monitoring Period” is defined as December 1, of the applicable calendar year, through March 31, of the following applicable calendar year.

CONTRACT PERIOD

DATES

BASE YEAR	April 1, 2004 through March 31, 2005
OPTION YEAR 1	April 1, 2005 through March 31, 2006
OPTION YEAR 2	April 1, 2006 through March 31, 2007
OPTION YEAR 3	April 1, 2007 through March 31, 2008
OPTION YEAR 4	April 1, 2008 through March 31, 2009

**SECTION G - CONTRACT ADMINISTRATION DATA**

**G.1. WBR 1452.242-90 GOVERNMENT POINT OF CONTACT--BUREAU OF RECLAMATION--PN REGION (FEB 1995)**

The contracting office's point of contact for this contract is:

Name: Becky Young

Title: Contract Specialist

Bureau of Reclamation  
1150 North Curtis Road  
Boise ID 83706-1234

Phone (208) 378-5107

FAX (208) 378-5108

## **SECTION H--SPECIAL CONTRACT REQUIREMENTS**

### **H.1. WBR 1452.209-91 KEY PERSONNEL REQUIREMENTS--BUREAU OF RECLAMATION--PN REGION (FEB 1995)**

a. Certain skilled experience professional and/or technical personnel are essential for successful Contractor accomplishment of the work to be specified under this contract. These are defined as "Key Personnel" and are those persons whose resumes shall be submitted for evaluation in support of the contract.

The Contractor agrees that such personnel shall not be removed from the contract work or replaced without compliance with paragraphs b. and c. hereof.

b. The Contractor shall obtain the Contracting Officer's written approval to substitute for any key personnel should they become unavailable for performance of the contract for any continuous period in excess of 5 days. The Contractor shall consult with the Contracting Officer if any of the key personnel, in any way, plans or anticipates less effort to be contributed to the work than specified in the technical proposal incorporated herein. If Reclamation determines that the reduction of effort would be so substantial as to impair the successful prosecution of work it may request a change in personnel, termination of the effort, or other appropriate modification of the contract.

c. In addition to the above, the Contractor shall consult with the Contracting Officer if changes are to be made in key personnel previously committed to perform work in accordance with his proposal. No changes of key personnel shall be permitted without prior approval of the Contracting Officer.

All requests for approval of substitutions hereunder must be in writing and provide a detailed explanation of the circumstances necessitating the proposed substitutions. They must contain a complete resume for the proposed substitution, and any other information requested by the Contracting Officer or needed by him to approve or disapprove the proposed substitution. The Contracting Officer or his authorized representative will evaluate such requests and promptly notify the Contractor of his approval or disapproval thereof in writing.

## **PART II--CONTRACT CLAUSES**

### **SECTION I - CONTRACT CLAUSES**

#### **I.1. WBR 1452.201-80 AUTHORITIES AND LIMITATIONS -- BUREAU OF RECLAMATION (JUL 1993)**

(a) All work shall be performed under the authority exercised by the Contracting Officer who has been appointed in accordance with the requirements of the Department of the Interior Acquisition Regulation (DIAR) 1401.603 (48 CFR 1401.603).

(b) The Contracting Officer may designate other Government employees to act as authorized representatives in administering this contract in accordance with the requirements of DIAR 1401.670 (48 CFR 1401.670). Any designation shall be made to the authorized representative by an appointment memorandum signed by the Contracting Officer which contains the scope and limitations of authority delegated for purposes of administering this contract. A copy of the memorandum, and any revisions to it, shall be provided to the Contractor which shall acknowledge receipt.

(c) The Contractor shall, without unnecessary delay, comply with any written or oral direction of the contracting officer or authorized representative(s) acting within the scope and authority of their appointment memorandum. Such orders or direction include, but are not limited to, instructions, interpretations, approvals, or rejections associated with work under this contract including requirements for submission of technical data, shop drawings, samples, literature, plans, or other data required to be approved by the Government under this contract.

(d)(1) If the Contractor receives direction for work under this contract (including any written or oral orders it regards as a change order under the Changes clause of this contract) and it considers such direction to have been issued without proper authority (including instances where it believes delegated authority has been exceeded), it shall not proceed with the direction and shall notify the Contracting Officer within five (5) working days of receipt of the direction. On the basis of the most accurate information available to the Contractor, the notice shall state--

(i) The date, nature, and circumstances of the direction received;

(ii) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such direction;

(iii) The identification of any documents and the substance of any oral communication involved in such direction;

(iv) The contract line items or other contract requirements that may be affected by the alleged direction including any suspected delays or disruption of performance; and

(v) Any other information considered pertinent.

(2) Unless otherwise provided in this contract, the Contractor assumes all costs, risks, liabilities, and consequences of performing any work it is directed to perform under this paragraph prior to receipt of the Contracting Officer's determination issued under paragraph (e) of this clause.

(e) The Contracting Officer shall promptly, after receipt of any notice made under paragraph (d) of this clause, respond to the notice in writing. The response shall --

(1) Confirm that the direction contained in the Contractor's notice was unauthorized and either authorize it by appropriate contract modification or countermand it;

(2) Deny that the direction contained in the Contractor's notice was outside the scope and limitations of the authority of the authorized representative who gave the direction and direct the Contractor to proceed immediately with the direction received or, when necessary, direct the mode of further performance; or

(3) In the event the information contained in the Contractor's notice is inadequate to make a decision under subparagraphs (e)(1) or (2) of this clause, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(f) A failure of the parties to agree upon the nature of a direction, or upon the contract action to be taken with respect thereto, shall be subject to the provisions of the Disputes clause of this contract.

## **I.2. 52.202-1 DEFINITIONS (DEC 2001)**

(a) "Agency head" or "head of the agency" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.

(b) "Commercial component" means any component that is a commercial item.

(c) "Commercial item" means--

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that--

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for--

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if-

(i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government.

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed; For purposes of these services-

(i) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) "Component" means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).

(e) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(f) "Nondevelopmental item" means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use.

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

### **I.3. 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) above, the Government is entitled--

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

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

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

#### **I.4. 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)**

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

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

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

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

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

**I.5. 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**

(a) Except as provided in (b) below, 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) above 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 \$100,000.

**I.6. 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)**

(a) Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

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

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract, the amount of 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 monies are withheld.

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

**I.7. 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

**I.8. 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

**I.9. 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2003)**

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization", as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C.450B) and include Alaskan Natives.

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

"Local Government," as used in this clause, means a unit of Government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), title 37, U.S. Code.

(3) A special Government employee, as defined in section 202, title 18, U.S. Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

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

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

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

(b) Prohibitions.

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibition of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of paragraph (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted only where they are prior to formal solicitation of any covered Federal action--

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

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507 and other subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

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

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

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally

advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

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

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) Disclosure.

(A) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(B) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

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

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

(C) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(D) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

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

(v) Penalties.

(A) Any person who makes an expenditure prohibited under paragraph (a) of this clause or fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to a 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.

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

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

**I.10. 1452.203-70 RESTRICTION ON ENDORSEMENTS--DEPARTMENT OF THE INTERIOR (JUL 1996)**

The Contractor shall not refer to contracts awarded by the Department of the Interior in commercial advertising, as defined in FAR 31.205-1, in a manner which states or implies that the product or service provided is approved or endorsed by the Government, or is considered by the Government to be superior to other products or services. This restriction is intended to avoid the appearance of preference by the Government toward any product or service. The Contractor may request the Contracting Officer to make a determination as to the propriety of promotional material.

**I.11. 52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)**

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

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.” For paper and paper

products, postconsumer material means “postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as—

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

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

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

“Printed or copied double-sided” means printing or reproducing a document so that information is on both sides of a sheet of paper.

“Recovered material,” for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material

standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

**I.12. 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN  
SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR  
PROPOSED FOR DEBARMENT (JUL 1995)**

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(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.

**I.13. 52.215-2 AUDIT AND RECORDS--NEGOTIATION (JUN 1999)**

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

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

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

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

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

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

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

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

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

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

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and--

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

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

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

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

**I.14. 52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

**I.15. 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)**

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because--

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

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

(1) The actual subcontract; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**I.16. 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--  
MODIFICATION (OCT 1997)**

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

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or

Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

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

(1) The actual subcontract; or

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

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

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

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

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

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

(2)(i) Except as prohibited by 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 cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

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

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

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

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

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

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

**I.17. 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)**

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

(b) 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 (a) of this clause were accurate complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, who entered into, the Contractor shall insert either--

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data-- Modifications.

**I.18. 52.215-13 SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS  
(OCT 1997)**

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

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

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

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

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

**I.19. 52.215-14 INTEGRITY OF UNIT PRICES (OCT 1997)**

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

**I.20. 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION  
OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997)**

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

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

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

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

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

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

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

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

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

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

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

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

(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.

**I.21. 1452.215-70 EXAMINATION OF RECORDS BY THE DEPARTMENT OF THE INTERIOR (AUG 1996) (DEVIATION)**

For purposes of the Examination of Records by the Audit and Records -- Negotiation (AUG 1996) clause of this contract (FAR 52.215-2), the Secretary of the Interior, the Inspector General, and their duly authorized representative(s) from the Department of the Interior shall have the same access and examination rights as the Comptroller General of the United States.

**I.22. 1452.215-94 CONTRACTOR'S TECHNICAL PROPOSAL INCORPORATED INTO CONTRACT - BUREAU OF RECLAMATION - PN REGION (MAR 2001)**

(a) Portions of the successful offeror's technical proposal, listed on the award sheet of the contract, have been incorporated, either physically or by reference, into this contract. Nothing contained in the successful offeror's technical proposal shall constitute a waiver to any other requirement of the contract.

(b) If, after contract award, it is discovered that changes made during negotiations were not subsequently incorporated into the contract as described above, those omissions shall be considered

administrative oversights, and shall be corrected by unilateral modification to the contract, at no change in contract cost or price or other terms and conditions.

**I.23. 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within the contract performance period.

**I.24. 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)**

(a) The Government may extend the term of this contract by written notice to the Contractor within 15 days prior to the start of the services for the next option period; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.

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

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed five years (but see clause 52.217-8).

**I.25. 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)**

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

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

Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

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

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

“Service-disabled veteran-owned small business concern”--

(1) Means a small business concern—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **I.26. 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002)**

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

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

“Commercial item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

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

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

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

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

(c) 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 concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-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 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.

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

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of–

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror’s total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

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

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

(iv) Total dollars planned to be subcontracted to 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; 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, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, service-disabled veteran-owned small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

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

(i) Small business concerns;

- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; 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 \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.
- (iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, 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., PRO-Net), guides, and other data that identify small business, 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 \$100,000, indicating—

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

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

(C) Whether 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, and women-owned small business sources; and

(D) Veterans service organizations.

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

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

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

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

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

(1) Assist small business, veteran-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) 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.

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

(1) The master plan has been approved;

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

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

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

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

(i) The failure of the Contractor or subcontractor to comply in good faith with--

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) *Standard Form 294, Subcontracting Report for Individual Contracts*. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) *Standard Form 295, Summary Subcontract Report*. This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards

under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

**I.27. 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, Northern Mariana Islands, American Samoa, Guam or the US 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, Northern Mariana Islands, American Samoa, Guam or the US 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.

**I.28. 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS  
ACT-OVERTIME COMPENSATION (SEPT 2000)**

(a) *Overtime requirements.* No Contractor or subcontractor contracting 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 ½ times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds require to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) *Payrolls and basic records.*

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each such employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in the paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower-tier subcontracts. The Contractor shall be responsible for compliance

by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

**I.29. 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

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

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

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

**I.30. 52.222-26 EQUAL OPPORTUNITY (APR 2002)**

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex,

or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

**I.31. 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)**

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

“All employment openings” means all positions except executive and top management, those positions that will be filled from within the Contractor’s organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

“Executive and top management” means any employee-

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch

establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

“Other eligible veteran” means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

“Positions that will be filled from within the Contractor’s organization” means employment openings for which the Contractor will give no consideration to persons outside the Contractor’s organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established “recall” lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

“Qualified special disabled veteran” means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

“Special disabled veteran” means-

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability-

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (*i.e.*, a significant impairment of the veteran’s ability to prepare for, obtain, or retain employment consistent with the veteran’s abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

“Veteran of the Vietnam era” means a person who-

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred-

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975;

or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) *General.* (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as-

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, positions descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) *Listing openings.* (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public

employment service office of the State wherein the opening occurs. Listing employment openings with U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirement of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) *Postings.* (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall-

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who special disabled veterans are informed of the contents of the notice (e.g. the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

**I.32. 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

(a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) any other term, condition, or privilege of employment, (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793)(the Act), as amended.

(b) Postings. (1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**I.33. 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)**

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on -

(1) The number of special disabled veterans and the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era, and the number of eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans' Employment Report (VETS-100 Report)".

(c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12 month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date -

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that -

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

**I.34. 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)**

(a) *Definitions.* "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to Furnish Fringe Benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum Wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor Contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective

increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, an/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to Employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and Sanitary Working Conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act--

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay Periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of Payments and Termination of Contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act,

the Contracting Officer may, 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 or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective Bargaining Agreements Applicable to Service Employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority List.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and Interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's Certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

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

(q) *Variations, Tolerances, and Exemptions Involving Employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision--

- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
- (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
- (3) the employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
- (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes Concerning Labor Standards.* The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 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.

**(S) I.35. 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES  
 (MAY 1989)**

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS STATEMENT IS FOR INFORMATION ONLY: IT IS NOT A WAGE DETERMINATION

Employee Class	Monetary Wage - Fringe Benefits	
WG-10 Heavy Equipment Operator	\$19.81	38%
WG-8 Truckdriver (tractor/trailer)	\$16.95	38%
WG-2 Laborer	\$ 9.88	38%

**(S) I.36. 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT--  
PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS)  
(MAY 1989)**

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et. seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum wage rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is

extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

**I.37. 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003)**

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

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

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

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

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

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

**I.38. 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 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration); or as soon as possible for contracts of less than 30 calendar days performance duration--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about--

(i) The dangers of drug abuse in the workplace;

(ii) The contractor's policy of maintaining a drug-free workplace

(iii) Any available drug counseling, rehabilitation, and employee assistance

programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b) (1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b) (1) of this clause, that as a condition of continued employment on this contract, the employee will--

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (a)(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 calendar 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 drug abuse violations occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

**I.39. 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)**

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if –

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification (SIC) Codes or other corresponding North American Industry Classification System sectors;

(A) Major group code 10 (except 1011, 1081, and 1094).

(B) Major group code 12 (except 1241).

(C) Major groups codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(5) The facility is not located in the United States or its outlying areas.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall--

(i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(ii) Continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall--

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

**I.40. WBR 1452.223-81 SAFETY AND HEALTH -- BUREAU OF RECLAMATION (DEC 2002)**

(a) The Contractor shall not require any person employed in the performance of this contract (including subcontracts) to work under conditions which are unsanitary, hazardous, or dangerous to the employee's health or safety.

(b) In addition to the requirements of the Accident Prevention clause of this contract, the Contractor shall comply with the Bureau of Reclamation "Reclamation Safety and Health Standards" (RSHS) (Revised 2001) manual. Some contracts may not contain the Accident Prevention clause, e.g., those formed under simplified acquisition procedures. Even if the Accident Prevention clause is not part of this contract, the Contractor must still comply with the Reclamation RSHS manual.

(c)(1) The safety and health standards as referenced in subparagraph (b)(2) of the Accident Prevention clause may be obtained from any regional or area office of the Occupational Safety and Health Administration, U.S. Department of Labor.

(2) The RSHS manual as referenced in subparagraph (b) above can be obtained via the Internet at this website address: [www.usbr.gov/safety/RSHS/rshs.htm](http://www.usbr.gov/safety/RSHS/rshs.htm)

(d) The Contractor shall submit a written proposed safety program in the form and time intervals prescribed in section 2 of the RSHS manual and amendments or revisions thereto in effect on the date of the solicitation.

(e) In addition to any other provisions in the contract, the Contractor shall comply with all safety and material data submittal requirements contained in the RSHS manual and revisions thereto.

(f) The Contractor shall maintain an accurate record of, and shall report to the Contracting Officer (or authorized representative) in the manner prescribed by the Contracting Officer, all cases of death, occupational diseases, or traumatic injury to employees or the public involved, and property damage in excess of \$2,500 occurring during performance of work under this contract.

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

(h) In the event there is a conflict between the requirements contained in any of the safety documents referenced herein, the more stringent requirement shall prevail.

**I.41. WBR 1452.223-82 PROTECTING FEDERAL EMPLOYEES AND THE PUBLIC FROM EXPOSURE TO TOBACCO SMOKE IN THE FEDERAL WORKPLACE—BUREAU OF RECLAMATION (OCT 1998)**

(a) In performing work under this contract, the contractor shall comply with the requirements of Executive Order 13058, dated August 9, 1997, which prohibits the smoking of tobacco products in all interior space owned, rented, or leased by the executive branch of the Federal Government, and in any outdoor areas under executive branch control in front of air intake ducts.

(b) This restriction does not apply in designated smoking areas that are enclosed and exhausted directly to the outside and away from air intake ducts, and are maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area.

(c) Smoking may also be restricted at doorways and in courtyards under executive branch control in order to protect workers and visitors from environmental tobacco smoke.

**I.42. 52.225-11 BUY AMERICAN ACT - CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (JUNE 2003)**

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

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

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means-

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

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

“Designated country” means any of the following countries: Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark, Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Iceland Ireland, Israel, Italy, Japan, Kiribati, Korea-Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda, Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen

“Designated country construction material” means a construction material that-

(1) Is wholly the growth, product, or manufacture of a designated country; or

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

“Domestic construction material” means-

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

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

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

“North American Free Trade Agreement country” means Canada or Mexico.

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

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

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

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

(b) *Construction materials.*

(1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country and NAFTA country construction materials.

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

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

NONE

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

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

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

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

(c) *Request for determination of inapplicability of the Buy American Act.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including-

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

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

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

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

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

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

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

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

<u>Construction Material</u> <u>Description</u>	<u>Unit of</u> <u>Measure</u>	<u>Quantity</u>	<u>Price</u> <u>(Dollars)*</u>
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

*[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.]*

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

**I.43. 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)**

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent:

(1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or

(2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold; however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold; does not affect this authorization and consent.

**I.44. 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)**

Except for data contained on pages \_\_\_\_\_, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data--General" clause contained in this contract) in and to the technical data contained in the proposal dated \_\_\_\_\_, upon which this contract is based.

**I.45. 52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997)**

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

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

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

**I.46. 1452.228-70 LIABILITY INSURANCE-DEPARTMENT OF THE INTERIOR (JUL 1996)**

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

- \$ 250,000 each person.
- \$ 500,000 each occurrence.
- \$ 100,000 property damage.

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

**I.47. 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 2003)**

(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 and the United States, Puerto Rico, or the Northern Mariana Islands. If the contract is performed wholly or partly in any of those areas.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

**I.48. WBR 1452.229-90 NOTICE OF WASHINGTON STATE SALES TAX--BUREAU OF RECLAMATION--PN REGION (FEB 1995)**

Bidders are advised that Washington State Sales and Use Tax may be assessed on Government furnished equipment and materials. The Contractor shall be responsible for payment of the tax.

**I.49. WBR 1452.231-81 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE -- BUREAU OF RECLAMATION (JUL 1998)**

(a) *Definitions.* "Acquisition cost," as used in this clause means, the Contractor's original purchase price (including sales tax less salvage value) of an item of equipment including any and all

accessories and expendable components required for utilization the item of equipment. For used equipment which is reconditioned and recapitalized,

"Acquisition cost" shall mean the adjusted amount resulting from the recapitalized value of the equipment as determined from the Contractor's accounting records. "Equipment," as used in this clause, means equipment in sound workable condition at the construction work site, either owned or controlled by the Contractor or its subcontractors at any tier, or obtained from a commercial rental source, and furnished for use under this contract.

"Ownership cost," as used in this clause, means allowances for construction equipment depreciation and cost of facilities capital.

"Operating cost," as used in this clause, means the cost of operating equipment such as operating crew labor, servicing labor and equipment, labor and parts for all repairs and maintenance, fuel, oil, grease, supplies, tire wear and repair.

(b) *Policy.* (1) Equitable adjustments made in the price of this contract pursuant to the Changes, Differing Site Condition, Suspension of Work, or other clause of the contract, may include allowable ownership and operating costs for equipment. In accordance with FAR 31.105(d), allowable ownership and operating costs for each piece of equipment, or groups of similar serial or series equipment, shall be determined using actual cost data when such data are available from the Contractor's accounting records. When actual costs cannot be so determined or when actual cost data for a specific element of operating cost do not contain costs for individual pieces or types of equipment, the procedures in paragraph (d) of this clause shall be used to determine allowable costs (provided, in the case of operating costs, that the costs are reconciled to the Contractor's total cost for that operating element). For fully depreciated equipment, the procedures in paragraph (e) of this clause shall be used to determine allowable costs.

(c) *Required data.* In any request made for an equitable adjustment, the Contractor shall furnish to the Contracting Officer --

(1) A complete description of each item of equipment (including all accessory equipment attached thereto) to be used in connection with the work to be performed listing the date of manufacture, date of acquisition, make, model, size, capacity, mounting, and type of power;

(2) Evidence of the acquisition cost of new or used equipment to be used including all available current and historical supporting cost data. If evidence of acquisition cost is not provided by the Contractor or if the data provided are unacceptable to the Contracting Officer, the Contracting Officer may determine the acquisition cost by other appropriate means.

(d) *Use of the predetermined rate schedule.*

(1) When the Contracting Officer determines that allowable ownership and operating costs cannot be determined from the Contractor's accounting records, the U.S. Army Corps of Engineers pamphlet entitled "Construction Equipment Ownership and Operating Expense Schedule" (Schedule) for the State in which the construction site is located shall be used to calculate ownership and operating rates. Copies of the Schedules can be obtained, free of charge, from the U.S. Army Corps of Engineers, Publications Depot, 2803 52nd Avenue, Hyattsville, MD 20781-1102.

(2) For the purpose of determination of the hourly rates to be applied under this contract, working conditions shall be considered average, unless otherwise determined by the Contracting Officer.

(3) Rates for equipment not listed in the Schedule shall be calculated using the formulas in the Schedule. Alternatively, the Contracting Officer may determine to use rates in the Schedule for equipment comparable to the unlisted equipment, including horsepower and auxiliary features.

(e) *Fully depreciated equipment.* No depreciation or rental cost shall be allowed on equipment fully depreciated by the Contractor or by any division, subsidiary, parent company, or affiliate under common control. However, a reasonable rate for using fully depreciated equipment may be allowed by the Contracting Officer. Unless otherwise determined by the Contracting Officer, such hourly rate shall not exceed a value computed by multiplying the depreciation rate for the equipment (as shown in the Schedule table entitled "Construction Equipment Ownership and Operating Expense") by the economic index for the year of equipment manufacture (as shown in the Schedule table entitled "Economic Indexes for Construction Equipment"), divided by the economic index correspondingly with the year the Schedule is published. The year used for the basis of the rates in the Schedule is indicated in the table entitled "Equipment Age Adjustment Factors for Ownership Costs." Idle or standby time will not be paid for fully depreciated equipment.

(f) Idle or standby time. Equipment ownership costs for idle or standby time of equipment not fully depreciated shall be determined as follows:

(1) The allowable rate shall be made at 50 percent of the hourly rate for ownership costs if actual cost data are used. The maximum hours per week allowed shall not exceed 40 hours or the amount of hours regularly worked by the Contractor, whichever is less. No allowance shall be made for Saturdays, Sundays, or holidays, when work is not actually performed.

(2) If actual cost data cannot be determined, the rate shall be computed in accordance with the Schedule.

(3) No costs shall be allowed for time when the equipment would have been otherwise idle or was not in good operating condition.

(4) Periods of time less than 2 hours on which equipment is down for normal and regular ser-vice and for minor field repair or field maintenance shall be considered by the Contractor to be

operating time rather than idle or standby time and such periods shall not be deducted from use or operating time.

(5) No costs are allowable for fully depreciated equipment.

(g) Rental. Allowable costs for renting or leasing of equipment shall be determined in accordance with FAR 31.105(d)(2)(ii) and 31.205-36.

**(T) I.50. 52.232-7 PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (DEC 2002)**

The Government will pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

(a) *Hourly rate.* (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or designee. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the terms of (e) below, pay the voucher as approved by the Contracting Officer.

(2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) below.

(3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) *Materials and subcontracts.* (1) The Contracting Officer will determine allowable costs of direct materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Direct materials, as used in this clause, are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product.

(2) The Contractor may include reasonable and allocable material handling costs in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of the FAR.

(3) The Government will reimburse the Contractor for supplies and services purchased directly for the contract when the contractor –

(i) Has made payments of cash, checks, or other forms of payment for these purchased supplies or services; or

(ii) Will make these payments determined due –

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

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

(iii) The Government will not reimburse the Contractor for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.

(5) To the extent able, the Contractor shall--

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. The Contractor shall give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government.

(c) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the

ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(d) *Ceiling price.* The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(e) *Audit.* At any time before final payment under this contract the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of (f) and (g) below, the Government shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(f) *Assignment.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(g) *Refunds*. The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

(h) Interim payments. (1) Interim payments made prior to the final payment under the contract are contract financing payments. Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act.

(2) The designated payment office will make interim payments for contract financing on the 30th day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

#### **I.51. 52.232-8 DISCOUNTS FOR PROMPT PAYMENT (FEB 2002)**

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which

appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

**I.52. 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)**

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; provided, that this limitation shall not apply to—

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this contract;
- (c) The recovery of overpayments; and

(d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

**I.53. 52.232-11 EXTRAS (APR 1984)**

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

**I.54. 52.232-17 INTEREST (JUN 1996)**

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost of Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

**I.55. 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)**

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3237, 41 U.S.C. 15 (hereafter referred to as the "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.

**I.56. WBR 1452.232-80 LIMITATION OF FUNDS (FIXED-PRICE CONTRACT) --  
BUREAU OF RECLAMATION (MAY 2000)**

(a) Pursuant to Section 12 of the Reclamation Project Act of 1939 (43 U.S.C. 388) incremental funding for this contract will be made available in accordance with this clause. This statute permits the Secretary of the Interior to enter into contracts which will cover such periods as the Secretary may consider necessary but in which liability of the United States shall be contingent upon appropriations being made therefor. For purposes of this clause, the term "appropriations" includes the Bureau of Reclamation's subsequent allocation of funds for this contract.

(b) Incremental funding in the amount of 100% of the base performance period is presently available for payment and allotted under this contract for operation and maintenance of debris

disposal facilities for FDR Lake. This present funding allotment is contemplated to cover the work to be performed until March 31, 2005. A schedule for anticipated future funding allotments is as follows. This information is for planning purposes only and may not be fully representative of the funds actually allotted under this contract:

<u>FISCAL YEAR</u>	<u>FUNDING AMOUNT</u>
On award of contract-Base Period	20% of contract value
First Option Period	20% of contract value
Second Option Period	20% of contract value
Third Option Period	20% of contract value
Fourth & Final Option Period	20% of contract value

(c) For work identified in paragraph (b) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of specified work for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor shall not be obligated to continue performance of this work beyond that point. The Government shall not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for this work notwithstanding any contrary provisions of the Termination for Convenience of the Government clause of this contract.

(d) Notwithstanding the date specified in paragraph (b) of this clause, the Contractor shall notify the Contracting Officer in writing at least sixty days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 75 percent of the total amount then allotted to the contract for performance of work identified in paragraph (b) of this clause. The notification shall state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of the work up to the next scheduled date for allotment of funds identified in paragraph (b) of this clause, or to a mutually agreed upon substitute date. The notification shall also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of work funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (b) of this clause, or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer shall terminate any work for which additional funds have not been allotted, pursuant to the Termination for Convenience of the Government clause of this contract.

(e) When additional funds are allotted for continued performance of the work identified in paragraph (b) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraph (c) through (e) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly through revision of paragraph (b) of this clause. The Contracting Officer is

the only person authorized to provide notice, communication, or other form of representation to increase or decrease the amount of funds allotted by the Government to this contract.

(f) If, solely by reason of failure of the Government to allot additional funds in amounts sufficient for timely performance of the work identified in paragraph (b) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of work, or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(g) The Government may at any time prior to termination allot additional funds for the performance of the work identified in paragraph (b) of this clause.

(h) The termination provisions of this clause do not limit the rights of the Government under the Default clause of this contract. The provisions of this clause are limited to the work and allotment of funds as set forth in paragraph (b) of this clause. This clause is inapplicable once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (e) or (f) of this clause.

(i) Change orders shall not be considered authorization to exceed the amount allotted by the Government as specified in paragraph (b) of this clause unless the amount is increased by inclusion of a statement contained in the change order.

(j) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the Termination for Convenience of the Government clause of this contract.

**(S) I.57. 52.232-25 PROMPT PAYMENT (OCT 2003)**

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered 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 and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice payments.* (1) *Due Date.* (i) Except as indicated in subparagraph (a)(2) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor (except as provided in subdivision (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date shall be deemed to be 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) *Certain food products and other payments.* (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are –

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7<sup>th</sup> day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) 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)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(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 the mailing or transmission.)

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

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

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

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

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

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer – Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (e.g., evidence of shipment).

(4) *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)(4)(i) through (a)(4)(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, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) *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, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, 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.

(6) *Prompt payment discounts.* 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.

(7) *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)(7)(ii) of this clause, postmarked not later than 40 days after 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 longer than the 40<sup>th</sup> day after payment was made.

(iii) The additional penalty does not apply to payment regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulations).

(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) *Fast payment procedure due dates.* If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(d) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

**I.58. 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER-CENTRAL CONTRACTOR REGISTRATION (OCT 2003)**

(a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term 'EFT' refers to the funds transfer and may also include the information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either an Automated Clearing House (ACH) network, subject to the rules of National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and –

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

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

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to Subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT

instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

**I.59. 52.233-1 DISPUTES (JULY 2002) ALTERNATE I (DEC 1991)**

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

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

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

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

(2) (i) Contractors 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 duly authorized to certify the claim on behalf of the Contractor."

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

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

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

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

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

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

#### **I.60. 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 likewise, 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.

#### **I.61. 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 work a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

**I.62. 52.236-13 ACCIDENT PREVENTION (NOV 1991)**

(a) The Contractor shall provide and maintain work environments 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.

**I.63. 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care

causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

**I.64. 52.242-13 BANKRUPTCY (JUL 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identify 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.

**(S) I.65. 52.243-1 CHANGES--FIXED-PRICE (AUG 1987)**

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**(T) I.66. 52.243-3 CHANGES--TIME-AND-MATERIALS OR LABOR-HOURS (SEPT 2000)**

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed. Drawings, designs, or specifications.
- (2) Time or performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.
- (7) Amount of Government-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in any one or more of the following and will modify the contract accordingly:

- (1) Ceiling price.
- (2) Hourly rates.
- (3) Delivery schedule.
- (4) Other affected terms.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause excuses the Contractor from proceeding with the contract as changed.

**I.67. WBR 1452.243-80 MODIFICATION PROPOSALS -- BUREAU OF RECLAMATION  
(DEC 2001)**

(a) In submitting any proposal for a modification under this contract (including any proposal for an equitable adjustment resulting from a change under the Changes clause of this contract), the Contractor shall:

(1) Comply with the contract time limits for submission of a proposal or as specified by the Contracting Officer;

(2) Apply the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract;

(3) Furnish a breakdown of all costs estimated to complete the work required by the modification (i.e., cost of added work, incurred cost of deleted work already performed, estimated cost of deleted work not yet performed, and net cost of the modification) to include all costs associated with materials (identified by item and quantity), equipment (identified by item, quantity and whether contractor-owned or rented), categories of direct labor, bond and insurance premium adjustments, subcontracts, overhead and other indirect costs, profit/fee, and any other pricing information requested by the Contracting Officer, in sufficient detail to permit an analysis which demonstrates that the price proposed for the modification is fair and reasonable;

(4) Furnish a written justification for any requested time extensions; and

(5) For any pricing adjustment expected to exceed \$550,000 (considering both increases and decreases) --

(i) Submit cost and pricing data using the format specified in Table 15-2 of FAR 15.408 unless the Contracting Officer *agrees that an exception applies* under the circumstances set forth in FAR 15.403-1;

(ii) Certify in substantially the format prescribed in FAR 15.406-2 that to the best of its knowledge and belief, the data are accurate, complete and current as of the date of agreement on the negotiated price of the modification; and

(iii) Comply with the requirements of either the Subcontractor Cost or Pricing Data clause or the Subcontractor Cost or Pricing Data -- Modifications clause of this contract when the adjustment includes a subcontract modification involving a pricing adjustment expected to exceed \$550,000.

(b) Under the Changes clause of this contract, failure of the Contractor to timely assert its right for an adjustment or to submit a proposal for an adjustment by the date specified in the clause

(or another date specified by the Contracting Officer) may result in a unilateral adjustment of the contract by the Contracting Officer pursuant to the Disputes clause of this contract.

**I.68. 52.244-2 SUBCONTRACTS (AUG 1998)**

(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) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.

(c) 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 (d) or (e) of this clause.

(d) 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 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 or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

NONE

(f)(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 (c), (d), or (e) 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 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 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 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 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 (c), (d), or (e) of this clause.

(g) 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.

(h) 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).

(i) 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.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

NONE

#### **I.69. 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)**

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protege Program (Pub. L. 101-510, section 831, as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its proteges.

**I.70. 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (APR 2003)**

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

“Commercial item” has the meaning contained in the clause at 52.202-1, Definitions.

“Subcontract” includes a transfer of commercial items 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 items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The following clauses shall be insert the following clauses in subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212(a)).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793)

(v) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (Apr 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down 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 items 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.

**I.71. 52.245-1 PROPERTY RECORDS (APR 1984)**

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

**I.72. 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (JUNE 2003)**

(a) Government-furnished property.

(1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property.

(1) The Contracting Officer may, by written notice,

(i) decrease the Government-furnished property provided or to be provided under this contract, or

(ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this

contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any--

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in Government property.

(1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract--

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon--

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the material or its use in contract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) Use of Government property. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) Property administration.

(1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Risk of loss. Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the

Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which the Government is responsible.

(i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) Abandonment and restoration of Contractor's premises. Unless otherwise provided herein, the Government--

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) Overseas contracts. If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

**I.73. 52.248-1 VALUE ENGINEERING (FEB 2000)**

(a) *General.* The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) below.

(b) *Definitions.*

"Acquisition savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include--

(1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;

(2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

"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.

"Contracting office" includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

"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.

"Future unit cost reduction," as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either (1) throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary

because conditions are significantly different from those previously anticipated or (2) to the calculation of a lump- sum payment, which cannot later be revised.

"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 logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

"Instant contract," as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

"Instant unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any Contractor's development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

"Negative instant contract savings" means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

"Net acquisition savings" means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

"Sharing base," as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

"Sharing period," as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

"Unit," as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

"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 overall projected cost to the agency without impairing essential functions or characteristics; provided, that it does not involve a change--

(i) In deliverable end item quantities only;

(ii) In research and development (RD) end items or RD test quantities that is due solely to results of previous testing under this contract; or

(iii) To the contract type only.

(c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (8) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) Identification of the unit to which the VECP applies.

(4) 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 the Subcontracts paragraph of this clause, below.

(5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

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

(7) 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.

(8) 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 Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative 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 and made either before or within a reasonable time after contract performance is completed. Until such 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 rates.* If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon (1) this contract's type (fixed-price, incentive, or cost-reimbursement), (2) the sharing arrangement specified in paragraph (a) above (incentive, program requirement, or a combination as delineated in the Schedule), and (3) the source of the savings (the instant contract, or concurrent and future contracts), as follows:

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS (Figures in Percent)				
CONTRACT TYPE	SHARING ARRANGEMENT			
	INCENTIVE (VOLUNTARY)		PROGRAM REQUIREMENT (MANDATORY)	
	Instant Contract Rate	Concurrent and Future Contract Rate	Instant Contract Rate	Concurrent and Future Contract Rate

Fixed Price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	*50	*50	25	25
Incentive (fixed-price or cost) (other than award fee)	(**)	*50	(**)	25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	***25	***25	15	15

\*The contracting Officer may increase the Contractor's sharing rate to as high as 75 percent for each VECP.

\*\*Same sharing arrangement as the contract's profit or fee adjustment formula.

\*\*\*The Contracting Officer may increase the Contractor's sharing rate to as high as 50 percent for each VECP.

(g) *Calculating net acquisition savings.*

(1) Acquisition savings are realized when:

(i) the cost or price is reduced on the instant contract,

(ii) reductions are negotiated in concurrent contracts,

(iii) future contracts are awarded, or

(iv) agreement is reached on a lump-sum payment for future contract savings (see subparagraph (i)(4) below). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.

(2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) above). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.

(3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.

(4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.

(h) *Contract adjustment.* The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall--

(1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;

(2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;

(3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

(4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and

(5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:

(i) Fixed-price contracts--add to contract price.

(ii) Cost-reimbursement contracts--add to contract fee.

(i) *Concurrent and future contract savings.*

(1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with subparagraph (h)(5) above. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.

(2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by (i) subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset and (ii) multiplying the result by the Contractor's sharing rate.

(3) The Contracting Officer shall calculate the Contractor's share of future contract savings by (i) multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period, (ii) subtracting any Government costs or negative instant contract savings not yet offset, and (iii) multiplying the result by the Contractor's sharing rate.

(4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see subparagraph (h)(3) above) and shall not be subject to subsequent adjustment.

(5) *Alternate no-cost settlement method.* When, in accordance with subsection 48.104-4 of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:

(i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.

(ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.

(j) *Collateral savings.* If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm- fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.

(k) *Relationship to other incentives.* Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.

(l) *Subcontracts.* The Contractor shall include an appropriate value engineering clause in any subcontract of \$100,000 or more and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.

(m) *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 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.)

**I.74. 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)**

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

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

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

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

(7) Complete performance of the work not terminated.

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

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

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

(d) After expiration of the plant clearance period as defined in Subpart 45.6 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) 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 subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (a) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition or the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), 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.

**I.75. 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)**

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4)

floods, (5) epidemics, (6) quarantine restrictions (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) 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.

**I.76. 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.

**PART III—DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

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

1. DEPARTMENT OF LABOR WAGE DETERMINATION - GENERAL WAGE DECISION  
94-2565 DATED 07/18/2003 (PAGES 1 THRU 9)

## **PART IV - REPRESENTATIONS AND INSTRUCTIONS**

### **SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF BIDDERS**

#### **K.1. 52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)**

(a) The offeror certifies that--

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to--

(i) those prices;

(ii) the intention to submit an offer; or

(iii) the methods or factors used to calculate the prices offered.

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

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

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

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

(2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision

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*[insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];*

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

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

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

**K.2. 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)**

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, Standard Form-LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification is a prerequisite for making or entering into this contract imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this

provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

**K.3. 52.204-3 TAXPAYER IDENTIFICATION (OCT 1998)**

(a) Definitions.

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

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

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

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

(d) Taxpayer Identification Number (TIN).

- TIN: \_\_\_\_\_
- TIN has been applied for.
- TIN is not required because:

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

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

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

(e) Type of organization.

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other \_\_\_\_\_.

(f) Common Parent.

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

Name and TIN of common parent:

Name \_\_\_\_\_

TIN \_\_\_\_\_

**K.4. 52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)**

(a) Definition. *Women-owned business concern*, as used in this provision, means a concern 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 its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) Representation. [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The offeror represents that it  is,  is not a women-owned business concern.

**K.5. 52.209-5 CERTIFICATION REGARDING DEBARMENT SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DEC 2001)**

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

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

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

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

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

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

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

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

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

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

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

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the

Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

**K.6. 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (APR 2002)**

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 113310.

(2) The small business size standard is 500 employees.

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

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

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

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

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

(5) *[Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.]* The offeror represents as part of its offer that it  is,  is not a service-disabled veteran-owned small business concern.

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

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

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. *[The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:\_\_\_\_\_.]* Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

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

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

“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,” as used in this provision, means a small business concern--

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

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

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

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

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

**K.7. 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)**

The offeror represents that (a) it  has developed and has on file,  has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it  has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

**K.8. 52.222-38 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)**

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (*i.e.*, if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS-100 Report required by that clause.

**K.9. 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING  
(AUG 2003)**

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) By signing this offer, the offeror certifies that--

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: [Check each block that is applicable.]

(i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed 40 CFR 372.65;

(ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(iv) The facility does not fall within Standard Industrial Classification Code (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094).

(B) Major group code 12 (except 1241).

(C) Major groups codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(v) The facility is not located within the United States or its outlying areas.

## **SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO BIDDERS**

### **L.1. 52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (OCT 2003)**

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

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

(1) An offeror may obtain a DUNS number –

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

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

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

(i) Company legal business name.

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

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

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

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

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

**L.2. 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 from the addresses listed below. Bureau of Reclamation manuals and other publications including significant scientific, technical, and engineering works are available from the National Technical Information Service (NTIS). Information regarding availability and pricing may be obtained by contacting NTIS at the following address:

United States Department of Commerce  
 National Technical Information Service  
 5285 Port Royal Road  
 Springfield, Virginia 22161  
 Telephone: (703) 487-4650 or 1-800-553-6847

Acronym	Name and Address	Telephone
AA	Aluminum Association 900 19th St., NW Washington, DC 20006 www.aluminum.org	(202) 862-5100
AABC	Associated Air Balance Council 1518 K St., NW Washington, DC 20005 www.aabchq.com	(202) 737-0202
AAMA	American Architectural Manufacturers Association 1827 Walden Office Sq., Suite 104 Schaumburg, IL 60173-4268 www.aamanet.org	(847) 303-5664
AASHTO	American Association of State Highway and Transportation Officials 444 North Capitol St., NW, Suite 249 Washington, DC 20001 www.aashto.org	(202) 624-5800 (800) 231-3475
ABMA	American Bearing Manufacturers Association 1200 19th St., NW, Suite 300 Washington, DC 20036-2422 www.abma-dc.org	(202) 429-5155
ACGIH	American Conference of Governmental Industrial Hygienists 1330 Kemper Meadow Dr. Suite 600 Cincinnati, Ohio 45240 www.acgih.org	(513) 742-2020

Acronym	Name and Address	Telephone
ACI	American Concrete Institute P.O. Box 9094 Farmington Hills, MI 48333 www.aci-int.org	(248) 848-3700
ADC	Air Diffusion Council 104 South Michigan Ave., Suite 1500 Chicago, IL 60603	(312) 201-0101
ADSC	The International Association of Foundation Drilling 9696 Skillman Street, Suite 280 Dallas, TX 75243 www.adsc-iafd.com	(214) 681-5994
AF&PA	American Forest and Paper Association 1111 19th St., NW, Suite 800 Washington, DC 20036 www.afandpa.org	(202) 463-2700
AGC	Associated General Contractors of America 333 John Carlyle Street, Suite 200 Alexandria VA 22314 www.agc.org	(703) 548-3118
AHA	American Hardboard Association 1210 W. Northwest Hwy Palatine, IL 60067 www.hardboard.org	(847) 934-8800
AI	Asphalt Institute Research Park Drive P.O. Box 14052 Lexington, KY 40512-4052 www.asphaltinstitute.org	(606) 288-4960
AISC	American Institute of Steel Construction One East Wacker Dr., Suite 3100 Chicago, IL 60601-2001 www.aisc.org	(312) 670-2400
AISI	American Iron and Steel Institute 1101 17th St., NW, Suite 1300 Washington, DC 20036 www.steel.org	(202) 452-7100 (800) 277-3850
AITC	American Institute of Timber Construction 7012 S. Revere Pkwy, Suite 140 Englewood, CO 80112 www.aitc-glulam.org	(303) 792-9559
AMCA	Air Movement and Control Association International, Inc. 30 W. University Dr. Arlington Heights, IL 60004-1893 www.amca.org	(847) 394-0150

Acronym	Name and Address	Telephone
ANSI	American National Standards Institute 1819 L. Street, N.W. Washington, DC 20036 www.ansi.org	(202) 293-8020
APA/EWA	APA-The Engineered Wood Association P.O. Box 11700 Tacoma, WA 98411-0700 www.apawood.org	(253) 565-6600
API	American Petroleum Institute 1220 L St., NW Washington, DC 20005-4070 www.api.org	(202) 682-8000
AREMA	American Railway Engineering and Maintenance-of-Way Association 8201 Corporate Drive, Suite 1125 Landover, MD 02785-2230 www.arema.org	(301) 459-3200
ARI	Air-Conditioning and Refrigeration Institute 4301 Fairfax Dr., Suite 425 Arlington, VA 22203 www.ari.org	(703) 524-8800
ARRA	Asphalt Recycling and Reclaiming Association #3 Church Circle, PMB 250 Annapolis, MD 21401 www.arra.org	(410) 267-0023
ASCE	American Society of Civil Engineers World Headquarters 1801 Alexander Graham Bell Dr. Reston, VA 20191-4400 www.asce.org	(800) 548-2723 (703) 295-6300
ASHRAE	American Society of Heating, Refrigerating and Air-Conditioning Engineers 1791 Tullie Circle, NE Atlanta, GA 30329 www.ashrae.org	(800) 527-4723 (404) 636-8400
ASME	American Society of Mechanical Engineers 3 Park Ave. New York, NY 10016-5990 www.asme.org	(800) 843-2763
ASSE	American Society of Safety Engineers 1800 E. Oakton St. Des Plaines, IL 60018 www.asse.org	(847) 699-2929
ASSE	American Society of Sanitary Engineering 901 Canterbury, Suite A Westlake, OH 44145 www.asse-plumbing.org	(440) 835-3040

Acronym	Name and Address	Telephone
ASTM	American Society for Testing and Materials 100 Barr Harbor Dr. West Conshohocken, PA 19428-2959 www.astm.org	(601) 832-9585
AWI	Architectural Woodwork Institute 1952 Isaac Newton Sq. West Reston, VA 20190 www.awinet.org	(703) 733-0600
AWPA	American Wood-Preservers' Association P.O. Box 5690 Granbury, TX 76049 www.awpa.com	(817) 326-6300
AWS	American Welding Society 550 NW LeJeune Rd. Miami, FL 33126 www.amweld.org	(800) 443-9353 (305) 443-9353
AWWA	American Water Works Association 6666 W. Quincy Ave. Denver, CO 80235 www.awwa.org	(303) 794-7711
CDA	Copper Development Association Inc. 260 Madison Ave., 16th Floor New York, NY 10016 www.copper.org	(800) 232-3282 (212) 251-7200
CGA	Compressed Gas Association 1725 Jefferson Davis Hwy, Suite 1004 Arlington, VA 22202-4102 www.cganet.com	(703) 412-0900
CISCA	Ceilings and Interior Systems Construction Association 1500 Lincoln Hwy, Suite 202 St. Charles, IL 60174 www.cisca.org	(630) 584-1919
CISPI	Cast Iron Soil Pipe Institute 5959 Shallowford Rd., Suite 419 Chattanooga, TN 37421 www.cispi.org	(423) 892-0137
CLFMI	Chain Link Fence Manufacturers Institute 9891 Broken Land Pkwy, Suite 300 Columbia, MD 21046 www.chainlinkinfo.org	(301) 596-2583
CRI	Carpet and Rug Institute 310 S. Holiday Ave. Dalton, GA 30722-2048 www.carpet-rug.com	(800) 882-8846 (706) 278-3176

Acronym	Name and Address	Telephone
CRSI	Concrete Reinforcing Steel Institute 933 N. Plum Grove Rd. Schaumburg, IL 60173-4758 www.crsi.org	(847) 517-1200
CSSB	Cedar Shake and Shingle Bureau P.O. Box 1178 Sumas, WA 98295 www.cedarbureau.org	(604) 462-8961
CTI	Cooling Technology Institute 530 Wells Fargo Drive, Suite 218 Houston, TX 77090 www.cti.org	(281) 583-4087
DASMA	Door and Access Systems Manufacturers Association International 1300 Summer Avenue Cleveland, OH 44115-2851 www.dasma.com	(216) 241-7333
DHI	The Door and Hardware Institute 14150 Newbrook Dr., Suite 200 Chantilly, VA 20151 www.dhi.org	(703) 222-2010
EIMA	EIFS Industry Members Association 3000 Corporate Center Dr., Suite 270 Morrow, GA 30260 www.eifsfacts.com	(800) 294-3462 (770) 968-7945
EPA	Environmental Protection Agency US EPA/NSCEP P.O. Box 42419 Cincinnati, Ohio 45242 www.epa.gov	(800) 490-9198
FAA	Federal Aviation Administration 800 Independence Ave., SW Washington, DC 20591 www.faa.gov	(202) 366-4000
FM	FM Global Corporate Headquarters. P.O. Box 7500 Johnston, RI 02919 www.fmglobal.com	(781) 762-4300
GA	Gypsum Association 810 First St., NE, Suite 510 Washington, DC 20002 www.usg.com www.gypsum.org	(202) 289-5440
GANA	Glass Association of North America 2945 Southwest Wanamaker Dr., Suite A Topeka, KS 66614 www.glasswebsite.com/gana	(785) 271-0208

Acronym	Name and Address	Telephone
HI	Hydronics Institute Division of Gas Appliance Manufacturers Association 2107 Wilson Blvd., Suite 600 Arlington, VA 22201 www.gamanet.org	(703) 525-7060
HMMA	Hollow Metal Manufacturers Association Division of NAAMM 8 South Michigan Ave., Suite 1000 Chicago, IL 60603 www.naamm.org	(312) 332-0405
HPVA	Hardwood Plywood and Veneer Association P.O. Box 2789 Reston, VA 20195-0789 www.hpva.org	(703) 435-2900
IAS	International Approval Services U.S. Operations 8501 E. Pleasant Valley Rd. Cleveland, Ohio 44131-5575 www.approvals.org	(216) 524-4990
ICC	International Code Council 5203 Leesburg Pike #708 Falls Church, VA 22041 www.intlcode.org	(703) 931-4533
IEEE	Institute of Electrical and Electronics Engineers 3 Park Ave., 17th Floor New York, NY 10016-5997 www.ieee.org	(212) 419-7900
IES	Illuminating Engineering Society of North America 120 Wall Street, 17 <sup>th</sup> Floor New York, NY 10005 www.iesna.org	(212) 248-5000
ILI	Indiana Limestone Institute of America 400 Stone City Bank Building Bedford, IN 47421 www.iliai.com	(812) 275-4426
KCMA	Kitchen Cabinet Manufacturers Association 1899 Preston White Dr. Reston, VA 20191-5435 www.kcma.org	(703) 264-1690
LPI	Lightning Protection Institute 3335 N. Arlington Heights Rd., Suite E Arlington Heights, IL 60004 www.lightning.org	(800) 488-6864 (847) 577-7200
MBMA	Metal Building Manufacturers Association 1300 Sumner Ave. Cleveland, OH 44115-2851 www.mbma.com	(216) 241-7333

Acronym	Name and Address	Telephone
MFMA	Maple Flooring Manufacturers Association 60 Revere Dr., Suite 500 Northbrook, IL 60062 www.maplefloor.org	(847) 480-9138
MIA	Marble Institute of America 30 Eden Alley, Suite 301 Columbus, OH 43215 www.marble-institute.com	(614) 228-6194
MIL	Military Standardization Documents Defense Automated Printing Service 700 Robbins Ave., Building 4D Philadelphia, PA 19111-5094 www.dodssp.daps.mil	(215) 697-2179
MSS	Manufacturers Standardization Society of the Valve and Fittings Industry 127 Park St., NE Vienna, VA 22180-4602 www.mss-hq.com	(703) 281-6613
NAA	National Arborist Association Route 101, P.O. Box 1094 Amherst, NH 03031-1094 www.natlarb.com	(800) 733-2622 (603) 673-3311
NAAMM	National Association of Architectural Metal Manufacturers 8 South Michigan Ave., Suite 1000 Chicago, IL 60603 www.naamm.org	(312) 332-0405
NAAMM	North American Association of Mirror Manufacturers (Division of GANA) 2945 Southwest Wanamaker Dr., Suite A Topeka, KS 66614 www.glasswebsite.com	(913) 266-7013
NACE	NACE International 1440 South Creek Drive Houston, TX 77084 www.nace.org	(281) 228-6200
NAIMA	North American Insulation Manufacturers Association 44 Canal Center Plaza, Suite 310 Alexandria, VA 22314 www.naima.org	(703) 684-0084
NBGQA	National Building Granite Quarries Association, Inc. 1220 L. St., NW, Suite 100-167 Washington, DC 20005 www.nbgqa.com	(800) 557-2848
NCMA	National Concrete Masonry Association 2302 Horse Pen Rd. Herndon, VA 20171-3499 www.ncma.org	(703) 713-1900

Acronym	Name and Address	Telephone
NCRP	National Council on Radiation Protection and Measurement 7910 Woodmont Ave., Suite 800 Bethesda, MD 20814-3095 <a href="http://www.ncrp.com">www.ncrp.com</a>	(301) 657-2652
NEBB	National Environmental Balancing Bureau 8575 Grovemont Circle Gaithersburg, MD 20877 <a href="http://www.nebb.org">www.nebb.org</a>	(301) 977-3698
NECA	National Electrical Contractors Association 3 Bethesda Metro Center, Suite 1100 Bethesda, MD 20814 <a href="http://www.necanet.org">www.necanet.org</a>	(301) 657-3110
NELMA	Northeastern Lumber Manufacturers Association 272 Tuttle Rd. P.O. Box 87A Cumberland Center, ME 04021 <a href="http://www.nelma.org">www.nelma.org</a>	(207) 829-6901
NEMA	National Electrical Manufacturers Association 1300 N 17th St., Suite 1847 Rosslyn, VA 22209 <a href="http://www.nema.org">www.nema.org</a>	(703) 841-3200
NETA	International Electrical Testing Association P.O. Box 687 106 Stone St. Morrison, CO 80465 <a href="http://www.netaworld.org">www.netaworld.org</a>	(303) 697-8441
NFPA	National Fire Protection Association One Batterymarch Park P.O. Box 9101 Quincy, MA 02269-9101 <a href="http://www.nfpa.org">www.nfpa.org</a>	(800) 344-3555 (617) 770-3000
NFRC	National Fenestration Rating Council 1300 Spring St., Suite 500 Silver Spring, MD 20910 <a href="http://www.nfrc.org">www.nfrc.org</a>	(301) 589-6372
NGS	National Geodetic Survey Control NOAA, N/NGS12 National Geodetic Survey SSMC-3, #9202 1315 East-West Highway Silver spring MD 20910-3282 <a href="http://www.ngs.noaa.gov">www.ngs.noaa.gov</a>	(301) 713-3242
NIBS	National Institute of Building Sciences 1090 Vermont Ave., NW, Suite 700 Washington, DC 20005-4905 <a href="http://www.nibs.org">www.nibs.org</a>	(202) 289-7800

Acronym	Name and Address	Telephone
NIST	National Institute of Standards and Technology 100 Bureau Dr., MS 2150 Gaithersburg, MD 20899-2150 www.nist.gov	(301) 975-4025
NLA	National Lime Association 200 North Glebe Rd., Suite 800 Arlington, VA 22203 www.lime.org	(703) 243-5463
NLGA	National Lumber Grades Authority #406-First Capital Pl. 960 Quayside Dr. New Westminster, BC V3M 6G2 CANADA www.nlga.org	(604) 524-2393
NOFMA	National Oak Flooring Manufacturers Association P.O. Box 3009 Memphis, TN 38173-0009 www.nofma.org	(901) 526-5016
NPCA	National Paint and Coatings Association 1500 Rhode Island Ave., NW Washington, DC 20005 www.paint.org	(202) 462-6272
NRCA	National Roofing Contractors Association O'Hare International Center 10255 W. Higgins Rd., Suite 600 Rosemont, IL 60018 www.roofonline.org	(847) 299-9070
NSF	NSF International P.O. Box 130140 Ann Arbor, MI 48113-0140 www.nsf.org	(734) 769-8010 (800) 673-6275
NSPI	National Spa and Pool Institute 2111 Eisenhower Ave. Alexandria, VA 22314 www.nspi.org	(703) 838-0083
NTMA	National Terrazzo and Mosaic Association 110 E. Market St., Suite 200-A Leesburg, VA 20176 www.ntma.com	(800) 323-9736 (703) 779-1022
NUCA	National Utility Contractors Association 4301 North Fairfax Dr., Suite 360 Arlington, VA 22203-1627 www.nuca.com	(703) 358-9300
PCA	Portland Cement Association 5420 Old Orchard Rd. Skokie, IL 60077 www.portcement.org	(847) 966-6200

Acronym	Name and Address	Telephone
PCI	Precast/Prestressed Concrete Institute 209 W. Jackson Blvd. Chicago, IL 60606-6938 www.pci.org	(312) 786-0300
PDCA	Painting and Decorating Contractors of America 3913 Old Lee Hwy, Suite 33-B Fairfax, VA 22030 www.pdca.com	(703) 359-0826
PDI	Plumbing and Drainage Institute 45 Bristol Dr. South Easton, MA 02375 http://PDIonline.org	(800) 589-8956
PTI	Post Tensioning Institute 1717 W. Northern Ave., Suite 114 Phoenix, AZ 85021 www.post-tensioning.org	(602) 870-7540
RCSC	Research Council on Structural Connections www.boltcouncil.org	
RIS	The Redwood Inspection Service 630 J Street Eureka, CA 95501	(707) 444-3024
SCMA	Southern Cypress Manufacturers Association 400 Penn Center Blvd., #530 Pittsburgh, PA 15235 www.cypressinfo.org	(877) 607-7262
SDI	Steel Deck Institute P.O. Box 25 Fox River Grove, IL 60021 www.sdi.org	(847) 462-1930
SDI	Steel Door Institute 30200 Detroit Rd. Cleveland, OH 44145-1967 www.steeldoor.org	(440) 899-0010
SIGMA	Sealed Insulating Glass Manufacturers Association 401 N. Michigan Ave. Chicago, IL 60611 www.sigmaonline.org/sigma	(312) 644-6610
SJI	Steel Joist Institute 3127 10th Ave., North Ext. Myrtle Beach, SC 29577-6760 www.steeljoist.org	(843) 626-1995
SMACNA	Sheet Metal and Air Conditioning Contractors' National Association 4201 Lafayette Center Dr. Chantilly, VA 20151-1209 www.smacna.org	(703) 803-2980

Acronym	Name and Address	Telephone
SPIB	Southern Pine Inspection Bureau 4709 Scenic Hwy Pensacola, FL 32504-9094 www.spib.org	(850) 434-2611
SPRI	Single Ply Roofing Institute 200 Reservoir St., 309 A Needham, MA 02494 www.spri.org	(781) 444-0242
SSPC	SSPC: The Society for Protective Coatings 40 24th St., 6th Floor Pittsburgh, PA 15222-4656 www.sspc.org	(800) 837-8303 (412) 281-2331
STI	Steel Tank Institute 570 Oakwood Rd. Lake Zurich, IL 60047 www.steeltank.com	(847) 438-8265
SWI	Steel Window Institute 1300 Sumner Ave. Cleveland, OH 44115-2851 www.steelwindows.com	(216) 241-7333
SWRI	Sealant, Waterproofing and Restoration Institute 2841 Main St. Kansas City, MO 64108 www.swrionline.org	(816) 472-7974
TCA	Tile Council of America, Inc. 100 Clemson Research Blvd. Anderson, S.C. 29625 www.tileusa.com	(864) 646-8453
TIA/EIA	Telecommunications Industry Association/Electronic Industries Alliance 2500 Wilson Blvd., Suite 300 Arlington, VA 22201 www.tiaonline.org	(703) 907-7700
TMS	The Masonry Society 3970 Broadway, Suite 201-D Boulder, CO 80304-1135 www.masonrysociety.org	(303) 939-9700
TPI	Truss Plate Institute 583 D'Onofrio Dr., Suite 200 Madison, WI 53719	(608) 833-5900
TPI	Turfgrass Producers International 1855-A Hicks Rd. Rolling Meadows, IL 60008 www.turfgrassod.org	(800) 405-8873 (847) 705-9898

Acronym	Name and Address	Telephone
UL	Underwriters Laboratories Inc. 333 Pfingsten Rd. Northbrook, IL 60062-2096 www.ul.com	(847) 272-8800
WCLIB	West Coast Lumber Inspection Bureau P.O. Box 23145 Portland, OR 97281 www.wclib.org	(503) 639-0651
WDMA	Window and Door Manufacturers Association 1400 E. Touhy Ave., Suite 470 Des Plaines, IL 60018 www.nwwda.org	(800) 223-2301
WH	Intertek Testing Services Warnock Hersey Listing Services 3210 American Drive Mississauga, Ontario Canada L4V 1B3 www.itsqs.com	(905) 678-7820
WIC	Woodwork Institute of California 3164 Industrial Blvd. West Sacramento, CA 95691 www.wicnet.org	(916) 372-9943
WWPA	Western Wood Products Association 522 SW 5th Ave., Suite 500 Portland, OR 97204-2122 www.wwpa.org	(503) 224-3930

**L.3. WBR 1452.211-80 NOTICE OF INTENT TO ACQUIRE METRIC PRODUCTS AND SERVICES - BUREAU OF RECLAMATION (MAR 1993)**

(a) *Metric Transition Plan.* The Department of the Interior on December 6, 1991, issued a Metric Transition Program (Part 758 Department Manual Chapter 1) to establish and describe the program's policies and responsibilities. The Bureau of Reclamation (Reclamation), has developed a Metric Transition Plan to implement metrication in Reclamation. This plan describes Reclamation's overall strategy for using the metric system, defines general requirements and procedures for carrying out the transition, and details the tasks with milestones for Reclamation offices to complete.

(b) *The Omnibus Trade and Competitiveness Act of 1988 (Trade Act).*

(1) Section 5164 of Public Law 100-418, the Trade Act, amended the Metric Conversion Act of 1975 and designated the metric system of weights and measures for United States trade and commerce.

(2) The Trade Act establishes September 30, 1992 as the implementation date (to the extent economically feasible) for Federal agencies to use the metric system of measurement in its procurements, grants, and other business-related activities.

(3) The Trade Act permits exceptions to the use of the metric system to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units.

(4) As a result of the Trade Act, the President issued Executive Order 12770 dated July 25, 1991, to implement the congressional designation of the metric system as the preferred system of weights and measures for United States Trade and commerce.

(c) *Bureau of Reclamation Implementation.* As a result of the Trade Act, Reclamation will, to the maximum extent practicable, use hard conversion and soft conversion metric systems in designing its construction projects, eventually phasing out use of the soft conversion metric system. Exceptions to this policy will only be made when such use is impractical, produces inefficiencies or market losses, or is not economically feasible.

(d) *Expected Results.* Reclamation expects its support of the metric system to result in increased use of the metric system by U.S. contractors, thereby increasing their ability to compete in the international marketplace. Increasing use of the metric system by U.S. contractors will eliminate possible restrictions on their bidding in the international marketplace and will eliminate any impact of economic blocks by metric countries restricting the acceptance of non-metric products.

#### **L.4. 52.215-1 INSTRUCTIONS TO OFFERORS—COMPETITIVE ACQUISITION (JAN 2004)**

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

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

“In writing,” “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).

(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 office designated in the solicitation after the exact time specified for receipt of offers is 'late' and will not

be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

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

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

(3) It is the only proposal received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) A summary of the rationale for award.

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

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

**L.5. 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997)**

(a) Exceptions from cost or pricing data. (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

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

(ii) Commercial item exception. For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include--

(A) 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;

(B) 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;

(C) 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 offeror 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 provision, 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 offeror's determination of the prices to be offered in the catalog or market place.

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

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

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

**L.6. 1452.215-71 USE AND DISCLOSURE OF PROPOSAL  
INFORMATION--DEPARTMENT OF THE INTERIOR (APR 1984)**

(a) Definitions. For the purposes of this provision and the Freedom of Information Act (5 U.S.C. 552), the following terms shall have the meaning set forth below:

(1) "Trade Secret" means an unpatented, secret, commercially valuable plan, appliance, formula, or process, which is used for making, preparing, compounding, treating or processing articles or materials which are trade commodities.

(2) "Confidential commercial or financial information means any business information (other than trade secrets) which is exempt from the mandatory disclosure requirement of the Freedom of Information Act, 5 U.S.C. 552. Exemptions from mandatory disclosure which may be applicable to business information contained in proposals include exemption (4), which covers "commercial and financial information obtained from a person and privileged or confidential," and

exemption (9), which covers "geological and geophysical information, including maps, concerning wells.

(b) If the offeror, or its subcontractor(s), believes that the proposal contains trade secrets or confidential commercial or financial information exempt from disclosure under the Freedom of Information Act, (5 U.S.C. 552), the cover page of each copy of the proposal shall be marked with the following legend:

"The information specifically identified on pages \_\_\_\_\_ of this proposal constitutes trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act. The offeror requests that this information not be disclosed to the public, except as may be required by law. The offeror also requests that this information not be used in whole or part by the Government for any purpose other than to evaluate the proposal, except that if a contract is awarded to the offeror as a result of or in connection with the submission of the proposal, the Government shall have the right to use the information to the extent provided in the contract.

(c) The offeror shall also specifically identify trade secret information and confidential commercial and financial information on the pages of the proposal on which it appears and shall mark each such page with the following legend:

"This page contains trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom' of Information Act and which is subject to the legend contained on the cover page of this proposal."

(d) Information in a proposal identified by an offeror as trade secret information or confidential commercial and financial information shall be used by the Government only for the purpose of evaluating the proposal, except that (i) if a contract is awarded to the offeror as a result of or in connection with submission of the proposal, the Government shall have the right to use the information as provided in the contract, and (ii) if the same information is obtained from another source without restriction it may be used without restriction.

(e) If a request under the Freedom of Information Act seeks access to information in a proposal identified as trade secret information or confidential commercial and financial information, full consideration will be given to the offeror's view that the information constitutes trade secrets or confidential commercial or financial information. The offeror will also be promptly notified of the request and given an opportunity to provide additional evidence and argument in support of its position, unless administratively unfeasible to do so. If it is determined that information claimed by the offeror to be trade secret information or confidential commercial or financial information is not exempt from disclosure under the Freedom of Information Act, the offeror will be notified of this determination prior to disclosure of the information.

(f) The Government assumes no liability for the disclosure or use of information contained in a proposal if not marked in accordance with paragraphs (b) and (c) of this provision. If a request under the Freedom of Information Act is made for information in a proposal not marked in accordance with paragraphs (b) and (c) of this provision, the offeror concerned shall be promptly notified of the request and given an opportunity to provide its position to the Government. However, failure of an offeror to mark information contained in a proposal as trade secret information or confidential commercial or financial information will be treated by the Government as evidence that the information is not exempt from disclosure under the Freedom of Information Act, absent a showing that the failure to mark was due to unusual or extenuating circumstances, such as a showing that the offeror had intended to mark, but that markings were omitted from the offeror's proposal due to clerical error.

**L.7. WBR 1452.215-80 SOURCE EVALUATION AND SELECTION PROCEDURES--  
BUREAU OF RECLAMATION (APR 2003)**

The Government intends to evaluate proposals submitted under this solicitation and select a source for contract award without discussions (unless the contracting officer later determines discussions to be necessary) in accordance with the following provision: FAR 52.215-1 Instructions to Offerors – Competitive Acquisition (Feb 2000). Source selection shall be in accordance with procedures contained in FAR Part 15, Department of the Interior Acquisition (DIAR) Part 1415 (48 CFR 1415) and Bureau of Reclamation Acquisition Regulation WBR Part 1415. These procedures are summarized as follows:

(a) *Technical evaluation.* A Technical Proposal Evaluation Committee has been established to objectively evaluate technical proposals in accordance with the Evaluation Factors for Award -- Bureau of Reclamation provision in Part IV, Section M of this solicitation. Technical proposals shall be submitted in accordance with the Technical Proposal Instructions -- Bureau of Reclamation provision in Part IV, Section L of this solicitation.

(b) *Past Performance Evaluation.* In addition to any other past performance information required under the solicitation, the Contracting Officer (CO) shall use past performance information available from the Past Performance Information Retrieval System (PPIRS.GOV) in the source selection process on offerors competing for awards in excess of \$100,000, unless the CO has documented an exception from past performance consideration in accordance with FAR 15.304(c)(2)(iv).

(c) *Cost or price evaluation.* An objective cost or price evaluation of contract pricing proposals will be made in accordance with the Evaluation Factors for Award provision in Part IV, Section M of this solicitation. Pricing proposals shall be submitted in accordance with the Contract Pricing Proposal Instructions -- Bureau of Reclamation provision in Part IV, Section L of this solicitation. Pursuant to FAR 15.404-1, cost or price evaluation will be used to determine cost/price reasonableness and the offeror's understanding of, and ability to perform, the prospective contract.

(d) *Clarifications.* Clarifications are limited exchanges, between the Government and offerors, that may occur when award without discussions is contemplated. If award will be made without conducting discussions, offerors may be given the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.

(e) *Communications.* Communications are exchanges, between the Government and offerors, after receipt of proposals, leading to establishment of the competitive range. Communications may be conducted to enhance Government understanding of proposals, allow reasonable interpretation of the proposal, or facilitate the Government's evaluation process. Such communications may not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Communications are for the purpose of addressing issues that must be explored to determine whether a proposal should be placed in the competitive range. They shall not provide an opportunity for the offeror to revise its proposal, but may address ambiguities in the proposal or other concerns and information relating to past performance.

(f) *Competitive range.* If discussions are to be conducted, the contracting officer shall establish the competitive range based on the ratings of each proposal against all evaluation criteria. The competitive range shall comprise all the most highly rated proposals, unless the range is further reduced for purposes of efficiency. The contracting officer may determine that the number of most highly rated proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. The contracting officer may then limit the number of proposals in the range to the greatest number that will permit an efficient competition among the most highly rated proposals. If, after discussions have begun (see paragraph (g) below), an offeror originally in the competitive range is no longer considered to be among the most highly rated offerors being considered for award, that offeror may be eliminated from the range whether or not all material aspects of the proposal have been discussed, or whether or not the offeror has been afforded an opportunity to submit a proposal revision.

(g) *Preaward debriefing of offerors.* Offerors excluded from the competitive range or otherwise excluded from further consideration prior to the final source selection decision may request a debriefing before award. The process for requesting and conducting preaward debriefings may be found at FAR 15.505.

(h) *Discussions.* Discussions are exchanges between the Government and offerors, after establishment of the competitive range, that are undertaken with the intent of allowing the offeror to revise its proposal. These discussions may include bargaining, including persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. Discussions are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive

range. The primary objective of discussions is to maximize the Government's ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation.

(i) *Proposal revisions.* The contracting officer may request or allow proposal revisions to clarify and document understandings reached during negotiations. At the conclusion of discussions, each offeror in the competitive range shall be given an opportunity to submit a final proposal revision. The contracting officer is required to establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions shall be in writing and that the Government intends to make award without obtaining further revisions.

(j) *Preaward survey.* A Government survey activity may contact an offeror, or visit its facility, to obtain information for determining its financial resources and/or its technical capabilities to perform the work when available information is not sufficient for the Contracting Officer to make a determination regarding contractor responsibility as required by FAR Subpart 9.1. Current financial statements and other information required to make this determination shall be made available to the survey activity. Information provided shall be protected from release or disclosure outside the Government, except as provided in FAR Subpart 24.2, Freedom of Information Act.

(k) *Organizational conflicts of interest.* Award will not be made to an apparent successful offeror when an organizational conflict of interest is determined to exist and cannot be avoided or mitigated, unless the Contracting Officer determines that award is in the best interest of the United States and a waiver is obtained pursuant to DIAR 1409.503 (48 CFR 1409.503).

(l) *Source selection decision.* The source selection authority's (SSA) decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use reports and criteria prepared by others, the source selection decision shall represent the SSA's independent judgment. The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

(m) *Postaward notice.* After contract award, unsuccessful offerors will be provided with written notice regarding contract award (including the information listed in FAR 15.503(b)) by the Contracting Officer. Offerors receiving prior notice of exclusion from the competitive range under paragraph (f) of this provision will not receive this notice.

(n) *Postaward debriefing of offerors.* An offeror shall be debriefed and furnished the basis for the source selection decision and contract award if its written request is received by the contracting officer within three days after the offeror receives notice of contract award. The process for requesting and conducting postaward debriefings may be found at FAR 15.506.

**L.8. WBR 1452.215-81 GENERAL PROPOSAL INSTRUCTIONS--BUREAU OF RECLAMATION (JAN 1998)**

In addition to the requirements of the *Instruction to offerors - Competitive Acquisitions* provision of this solicitation, each offeror shall submit a proposal in accordance with the instructions contained in this provision.

(a) *General contents.* Each proposal shall:

- (1) Be specific and complete in every detail;
- (2) Conform to all solicitation provisions, clauses, or other requirements;
- (3) Be logically assembled, practical, legible, clear, concise, coherent; and indexed (cross-indexed, where appropriate); and
- (4) Contain appropriately numbered pages of each volume or part.

(b) *Arrangement of Proposal.* The proposal shall consist of three (3) physically separated volumes, individually entitled as stated below. The required number of copies for each volume are shown below:

<u>Volume</u>	<u>Title</u>	<u>Copies Required</u>
I	Representations, Certifications, and Other Statements of Offerors	One (1)
II	Technical Proposal	Two (2)
III	Pricing Proposal	Two (2)

(c) *Separation of volumes.* All copies of each proposal volume (i.e., all copies of Volume I) are to be packaged individually and clearly marked to identify contents. The exterior of each package containing proposals shall be marked with the solicitation number, and the time and date for receipt of proposals and the name and address of the offeror, in order to prevent mishandling.

(d) *Representations, certifications, and other offeror statements (Volume I).* Volume I shall incorporate the other Volumes by reference, but shall not physically include them. It shall consist of:

- (1) A fully executed Solicitation, Offer, and Award form required by Part I, Section A of this solicitation. It shall be used as the cover sheet (or first page) of each copy of Volume I;

(2) Fully executed and completed offeror representations, certifications, and acknowledgments required by Part IV, Section K of this solicitation;

(3) Additional information required by the solicitation to be furnished by the offeror which is not required to be obtained in another volume of the proposal;

(4) Make or Buy Program (if applicable);

(5) Requests for any waivers of any solicitation provisions or contract clauses; and

(6) A summary of any exemptions from, or deviations to, any other solicitation requirements.

(e) *Technical Proposal (Volume II)*. Reference the requirements contained in the Technical Proposal Instructions -- Bureau of Reclamation provision of the solicitation, Part IV, Section L.

(f) *Pricing Proposal (Volume III)*. Reference the requirements contained in the Pricing Proposal Instructions -- Bureau of Reclamation provision of the solicitation, Part IV, Section L. Offerors are hereby notified that even if cost or pricing data are not initially requested in this solicitation, the Contracting Officer reserves the right to request such data if they are later found necessary pursuant to FAR 15.403-5(a)(1).

#### **L.9. WBR 1452.215-82 TECHNICAL PROPOSAL INSTRUCTIONS--BUREAU OF RECLAMATION (JAN 1998)**

(a) *General*. The technical proposal shall be identified as Volume II of the offeror's proposal and shall be an orderly, specific, and complete document in every detail. It should be presented in a manner which allows it to "stand alone" without the need to reference other documents. It should convincingly describe the capability of the offeror's organization to participate in this project and effectively demonstrate a thorough understanding of the work statement contained in Part I, Section C of this solicitation. The proposal shall be organized and written so that it can be easily read and meaningfully evaluated by Reclamation personnel from a variety of different functional and technical disciplines. It should be a coherent document free of internal inconsistencies as well as inconsistencies with other volumes of the proposal.

(b) *Use and Disclosure of Proposal Information*. In accordance with the *Use and Disclosure of Proposal Information -- Department of the Interior* provision of this solicitation, offerors shall mark trade secret or confidential commercial or financial information contained in the proposal with the restrictive legends specified. The offeror shall also clearly and separately mark all proprietary information (as defined in FAR 3.104-3) contained in the proposal with the restrictive legend "Proprietary Information."

(c) *Format and Content.* To assist in the uniform evaluation of proposals, the following format shall be utilized in preparing the technical proposal:

(1) *Table of contents.* The Table of Contents shall list all sections of the technical proposal. Any future amendments, additions and/or revisions to the proposal shall be included in an updated Table of Contents;

(2) *Technical approach (method) proposed to accomplish the work statement.* The discussion of the technical approach shall:

(i) Contain detailed explanations of proposed approaches to performing and accomplishing the work, in particular the method of disposal for debris collected on the reservoir, and how you intend to schedule and perform preventive maintenance, including all necessary resources and equipment necessary to perform the work. Provide confirmation that the method proposed is acceptable to the State of Washington and meets all regulations as detailed in Section C. Repeating the work statement without elaborating on the specific tasks to be performed is unacceptable;

(ii) Contain a specific statement of any problems or major difficulties anticipated in performing or accomplishing the work, an evaluation of the various methods considered for resolution of the problems/difficulties, substantiation of the method(s) selected, principles or techniques which are proposed to solve the problem, and the degree of success expected;

(iii) Include specific statements of any interpretations, deviations, and exceptions to the work statement, specifications, or other solicitation requirements (unless alternate proposals are permitted by the General Proposal Instructions -- Bureau of Reclamation provision of this solicitation, offerors are cautioned that deviations and exceptions to the solicitation requirements may be detrimental to the evaluation of a proposal);

(iv) Address each of the factors listed in the Technical Evaluation Criteria in Part IV, Section M of this solicitation.

(3) *Project Management.* Include the proposed organization to manage the work, and its relationship to the offeror's overall corporate structure.

(4) *Personnel Qualifications.* Include the following information on personnel qualifications:

(i) The identity of specific personnel to be assigned to perform the requirements contained in the work statement. Include information verifying that the necessary personnel have the proper training and meet the regulations specified to perform work of this nature;

(ii) The names of specific key personnel to be assigned for direct work on the project and as direct technical supervisors including education, background and experience, accomplishments, and other pertinent information;

(iii) Any additional personnel required for full employment or consultation and the source from which they will be obtained;

(iv) A statement of assurance that the proposed additional personnel will be available for work on this contract; and

(v) A list of alternate personnel sources to be utilized in the event proposed personnel are not available as planned (Include full resume by name of all additional personnel listed);

(5) *Offeror Experience and Past Performance.* Provide a list of projects similar in scope and magnitude to the work required under this solicitation which the offeror has completed during the last 5 years. For each project, include:

(i) Name of the project;

(ii) Description of the work;

(iii) Contract number, date and type;

(iv) Name and address of the acquiring Government agency or commercial customer;

(v) Initial contract amount and final contract amount;

(vi) Any problems encountered in performance of the work and corrective action(s) taken; and

(vii) Name(s) and telephone number(s) of references from the acquiring agency or customer who may be contacted for further information.

*NOTE: In addition to past performance information submitted with your proposal the Government may gather additional information from other sources, both inside and outside the Government.*

*Evaluation of experience is directly related to how many similar projects your firm has completed or is currently performing. Evaluation of past performance is to determine how well you have done the relevant work. It is not presumed, or expected, that the offeror's past performance has been perfect. Rather, the past performance information supplied should contain evidence of the offeror's ability to isolate the root causes of any problems encountered during contract performance and demonstrate*

*the offeror's willingness and ability to cooperate with their customers in solving those problems. Problems not addressed by the offeror, but known to exist—or found to exist by the Government through other sources—will be presumed to still exist.*

(6) *Equipment.* The offeror shall provide information on any equipment required to perform and accomplish the work statement. Information on alternate sources considered for the equipment shall also be included. The offeror shall provide a statement of assurance that the proposed equipment will be fully functional and available for work on this contract.

(d) *Cost/Price Information.* To permit objective evaluation of the technical proposal, no cost or price information shall be included in the **technical** proposal. However, the proposal shall include:

(1) A breakdown of unpriced labor hour estimates for each contract line item number (see Section B) for each labor category proposed to accomplish each task or phase of the work and the basis for each estimate; and

(2) Identification of the types and quantities of proposed equipment necessary to perform the work.

*The Government's intent in evaluating the technical criteria is to complete a risk assessment and best value judgment for this procurement.*

#### **L.10. WBR 1452.215-83 PRICING PROPOSAL INSTRUCTIONS--BUREAU OF RECLAMATION (JAN 1998)**

(a) *General.* The pricing proposal shall be identified as Volume III of the offeror's proposal and shall be an orderly, specific, and complete document in every detail. It should be a coherent document free of internal inconsistencies and should be consistent with the technical approach(es) proposed in the technical proposal (Volume II). Offerors are hereby notified that even though cost or pricing data are not initially requested in this solicitation, the Contracting Officer reserves the right to request such data if they are later found necessary pursuant to FAR 15.403-5(a)(1).

(b) *Use and Disclosure of Proposal Information.* In accordance with the *Use and Disclosure of Proposal Information -- Department of the Interior* provision of this solicitation, offerors shall mark trade secret or confidential commercial or financial information contained in the proposal with the restrictive legends specified. The offeror shall also clearly and separately mark all proprietary information (as defined in FAR 3.104-3) contained in the proposal with the restrictive legend "Proprietary Information."

(c) *Pricing proposal breakdown.* The offeror shall submit Section B of the contract Schedule (Part I of this solicitation) with its proposed total prices/costs for each contract line item (including any options) and proposed unit price(s), if required.

Provide the breakdown for each "time and material" labor rate specified under contract line item numbers 003A, 005A, 007A, 009A, and 011A. The breakdown should include all burdens (shown separately), benefits (shown separately), and indirect costs (shown separately) that have been included in each hourly rate.

(d) *Cost Information in Other Volumes.* No cost information shall be included in any other volume of a proposal unless required by paragraph (d) of the Technical Proposal Instructions -- Bureau of Reclamation provision of this solicitation.

(e) *Page Numbering.* All pages in the cost proposal should be consecutively numbered (including pages with tables and exhibits). The offeror shall clearly identify all exhibits and supporting information.

(f) *Rounding of Costs.* All price or cost amounts proposed shall be expressed to the nearest whole dollar except for individual hourly labor rates (if required). All percentages shall be expressed to one decimal place.

(g) *Alternate Proposals.* If submission of alternate technical proposals is permitted by the General Proposal Instructions -- Bureau of Reclamation provision of this solicitation, the offeror shall submit a separate, detached pricing proposal conforming to the requirements of this provision for each alternate submitted. The alternate pricing proposal(s) shall be clearly labeled and identified.

**L.11. WBR 1452.215-91 FACSIMILE ACKNOWLEDGMENT OF AMENDMENTS, MODIFICATIONS TO OFFERS, AND WITHDRAWALS OF OFFERS-BUREAU OF RECLAMATION--PN REGION (MAR 2001)**

(a) Definition. "Facsimile submission" as used in this solicitation, means acknowledgment of amendments, modifications to offers, and withdrawals of offers, that are transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material. **(A COPY OF THE OFFER DOCUMENT ITSELF MAY NOT BE TRANSMITTED BY FACSIMILE TRANSMISSION).**

(b) Offerors may submit facsimile acknowledgments to amendments and/or may change offers already received by the Government in response to this solicitation and/or may withdraw offers. These responses must arrive at the place and by the time, specified in the solicitation.

(c) Facsimile submissions that fail to furnish required representations or information or that reject any of the terms, conditions, and provisions of the solicitation may be excluded from consideration.

(d) Facsimile submissions must contain the required signatures.

(e) If requested to do so by the Contracting Officer, the successful offeror agrees to promptly submit the complete original signed documents.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment: (208) 378-5108.

(2) Receiving facsimile equipment is a CANON Laser 3170.

(g) If the offeror chooses to transmit a facsimile submission, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile document including, but not limited to, the following:

(1) Receipt of garbled or incomplete submission.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of submission.

(5) Failure of the offeror to properly identify the submission.

(6) Illegibility of submission.

(7) Security of submission data.

**L.12. 1452.215-93 NOTICE OF INTENT TO INCORPORATE CONTRACTOR'S  
TECHNICAL PROPOSAL - BUREAU OF RECLAMATION - PN REGION (MAR  
2001)**

(a) Portions of the successful offeror's technical proposal shall be incorporated, physically or by reference, in any contract resulting from this solicitation. Nothing contained in the successful offeror's technical proposal shall constitute a waiver to any other requirement of the contract.

(b) The successful offeror may be asked to provide an updated technical proposal which reflects the results/responses to all negotiations and exchanges during the negotiation process for incorporation in the awarded contract. If, after contract award, it is discovered that changes made during negotiations were not subsequently incorporated into the contract as described above, those omissions shall be considered administrative oversights, and shall be corrected by unilateral modification to the contract, at no change in contract cost or price or other terms and conditions.

**L.13. 52.216-1 TYPE OF CONTRACT (APR 1984)**

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

**L.14. 52.233-2 SERVICE OF PROTEST (AUG 1996) (DEVIATION)**

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer by obtaining written and dated acknowledgment of receipt from the address and official designated in block 7 of the Standard Form 1442 or block numbers 7 and 10 of the Standard Form 33. A copy of the protest served on the Contracting Officer shall be simultaneously furnished by the protester to the Assistant Solicitor for Procurement and Patents, Office of the Solicitor, Room 6511, U.S. Department of the Interior, 18th and C Streets, NW., Washington DC 20240.

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

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

**L.15. WBR 1452.233-80 AGENCY PROCUREMENT PROTESTS BUREAU OF RECLAMATION (SEP 1997)**

(a) Executive Order 12979, Agency Procurement Protests, establishes policy on agency procurement protests. This policy is implemented at section 33.103 of the Federal Acquisition Regulation. For solicitations issued by the Bureau of Reclamation, an interested party may request independent review of its protest by the Bureau Procurement Chief.

(b) This independent review is available as an alternative to consideration by the contracting officer or as an appeal of the contracting officer's decision on a protest. An interested party may:

- (1) Protest to the contracting officer;
- (2) Protest directly to the Bureau Procurement Chief, without first protesting to the contracting officer; or
- (3) Appeal a contracting officer's decision to the Bureau Procurement Chief.

(c) An appeal of the contracting officer's decision must be received by the Bureau Procurement Chief (Bureau of Reclamation Denver Federal Center, Bldg. 67, PO Box 25007 (D-

7800), Denver, CO 80225-25007) no later than 3 days after receipt of that decision by the interested party. The Bureau Procurement Chief shall render a decision no later than 5 days after receipt of an appeal.

(d) If there is an appellate review of the contracting officer's decision by the Bureau Procurement Chief, it will not extend the General Accounting Office's timeliness requirements. Therefore, any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action (4 CFR 21.2(a)(3)).

**L.16. 52.237-1 SITE VISIT (APR 1984)**

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

Offerors may contact Mr. Alan Webley at 509-633-9333 to schedule a site visit.

**L.17. 52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)**

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

(b) The use in this solicitation of any Department of the Interior Acquisition Regulation (48 CFR Chapter 14) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

## **SECTION M - EVALUATION FACTORS FOR AWARD**

### **M.1. 52.217-5 EVALUATION OF OPTIONS (JULY 1990)**

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

### **M.2. WBR 1452.215-85 EVALUATION FACTORS FOR AWARD - QUALITY PREDOMINANCE--BUREAU OF RECLAMATION (APR 2001)**

(a) Award will be made to the responsible offeror submitting a proposal which conforms to the solicitation and is most advantageous to the Government considering the factors and any significant subfactors listed in this provision.

(b) In the evaluation of proposals, all evaluation factors other than cost or price (listed in this provision), when combined, are considered to be significantly more important than cost or price. The relative importance to be placed on the factors in relation to each other is contained in paragraph (e) of this provision. However, the degree of importance of cost or price may increase with the degree of non-cost or non-price equality between the proposals. If a proposal is determined by the Contracting Officer to be "technically unacceptable" as a result of evaluating all factors other than cost or price, the proposal may be rejected from further consideration. The Contracting Officer reserves the right to make award to other than the technically-acceptable offeror with the lowest cost/price proposal if it is determined that the technical benefits of another offeror's proposal justify its higher cost/price. The Contracting Officer also reserves the right to make award to a lower-cost/price, lower-scored offeror if it is determined that the cost/price premium involved in awarding to a higher-rated, higher-cost/price offeror is not justified.

(c) Pursuant to FAR 15.305, a cost or price evaluation may be performed to determine the reasonableness of costs or prices proposed and the offeror's understanding of, and ability to perform, the prospective contract.

(d) The following factors and significant subfactors (if listed) , will be considered in evaluating proposals and making the source selection:

1. Technical approach (method)
2. Past Performance
3. Experience
4. Key Personnel
5. Equipment
6. Price and price related factors

(e) The relative importance of the factors listed in paragraph (d) of this provision is as follows: The technical approach is individually more important than past performance, experience, key personnel, and equipment. Past performance and experience are of equal importance and individually are more important than key personnel and equipment. Key personnel and equipment are of equal value. The technical factors (technical approach, past performance, experience, key personnel, and equipment) combined are significantly more important than price and price-related factors.

94-2565 WA, SPOKANE

WAGE DETERMINATION NO: 94-2565 REV (19) AREA: WA, SPOKANE

HEALTH AND WELFARE LEVEL - INSURANCE ONLY \*\*OTHER WELFARE LEVEL WD: 94-2566\*\*

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REGISTER OF WAGE DETERMINATIONS UNDER		U.S. DEPARTMENT OF LABOR
THE SERVICE CONTRACT ACT		EMPLOYMENT STANDARDS ADMINISTRATION
By direction of the Secretary of Labor		WAGE AND HOUR DIVISION
		WASHINGTON D.C. 20210

William W.Gross	Division of		Wage Determination No.: 1994-2565
Director	Wage Determinations		Revision No.: 19
			Date Of Revision: 07/18/2003

State: Washington

Area: Washington Counties of Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Garfield, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Whitman

\*\*Fringe Benefits Required Follow the Occupational Listing\*\*

OCCUPATION CODE - TITLE	MINIMUM WAGE RATE
01000 - Administrative Support and Clerical Occupations	
01011 - Accounting Clerk I	9.68
01012 - Accounting Clerk II	10.88
01013 - Accounting Clerk III	12.75
01014 - Accounting Clerk IV	14.63
01030 - Court Reporter	13.16
01050 - Dispatcher, Motor Vehicle	12.39
01060 - Document Preparation Clerk	11.74
01070 - Messenger (Courier)	8.69
01090 - Duplicating Machine Operator	11.74
01110 - Film/Tape Librarian	11.21
01115 - General Clerk I	7.11
01116 - General Clerk II	8.01
01117 - General Clerk III	10.87
01118 - General Clerk IV	12.21
01120 - Housing Referral Assistant	16.04
01131 - Key Entry Operator I	10.15
01132 - Key Entry Operator II	13.15
01191 - Order Clerk I	9.87
01192 - Order Clerk II	11.59
01261 - Personnel Assistant (Employment) I	10.79
01262 - Personnel Assistant (Employment) II	12.13
01263 - Personnel Assistant (Employment) III	13.51
01264 - Personnel Assistant (Employment) IV	15.65
01270 - Production Control Clerk	16.26
01290 - Rental Clerk	9.33
01300 - Scheduler, Maintenance	12.43
01311 - Secretary I	12.43
01312 - Secretary II	13.87
01313 - Secretary III	16.04
01314 - Secretary IV	19.76

01315 - Secretary V	21.25
01320 - Service Order Dispatcher	15.31
01341 - Stenographer I	11.06
01342 - Stenographer II	12.43
01400 - Supply Technician	17.17
01420 - Survey Worker (Interviewer)	10.40
01460 - Switchboard Operator-Receptionist	9.57
01510 - Test Examiner	13.87
01520 - Test Proctor	13.87
01531 - Travel Clerk I	10.58
01532 - Travel Clerk II	11.12
01533 - Travel Clerk III	11.90
01611 - Word Processor I	10.95
01612 - Word Processor II	12.29
01613 - Word Processor III	13.72
03000 - Automatic Data Processing Occupations	
03010 - Computer Data Librarian	11.29
03041 - Computer Operator I	12.06
03042 - Computer Operator II	14.48
03043 - Computer Operator III	17.47
03044 - Computer Operator IV	19.39
03045 - Computer Operator V	21.49
03071 - Computer Programmer I (1)	16.23
03072 - Computer Programmer II (1)	20.20
03073 - Computer Programmer III (1)	24.05
03074 - Computer Programmer IV (1)	27.62
03101 - Computer Systems Analyst I (1)	23.30
03102 - Computer Systems Analyst II (1)	27.00
03103 - Computer Systems Analyst III (1)	27.62
03160 - Peripheral Equipment Operator	13.16
05000 - Automotive Service Occupations	
05005 - Automotive Body Repairer, Fiberglass	18.85
05010 - Automotive Glass Installer	15.16
05040 - Automotive Worker	15.16
05070 - Electrician, Automotive	16.48
05100 - Mobile Equipment Servicer	14.33
05130 - Motor Equipment Metal Mechanic	16.48
05160 - Motor Equipment Metal Worker	15.16
05190 - Motor Vehicle Mechanic	16.57
05220 - Motor Vehicle Mechanic Helper	13.02
05250 - Motor Vehicle Upholstery Worker	14.33
05280 - Motor Vehicle Wrecker	15.16
05310 - Painter, Automotive	15.81
05340 - Radiator Repair Specialist	15.16
05370 - Tire Repairer	13.21
05400 - Transmission Repair Specialist	16.48
07000 - Food Preparation and Service Occupations	
(not set) - Food Service Worker	8.10
07010 - Baker	10.22
07041 - Cook I	8.84
07042 - Cook II	10.16
07070 - Dishwasher	8.04
07130 - Meat Cutter	12.93
07250 - Waiter/Waitress	8.18
09000 - Furniture Maintenance and Repair Occupations	
09010 - Electrostatic Spray Painter	15.81
09040 - Furniture Handler	12.67
09070 - Furniture Refinisher	15.81
09100 - Furniture Refinisher Helper	13.02
09110 - Furniture Repairer, Minor	14.33

09130 - Upholsterer	15.81
11030 - General Services and Support Occupations	
11030 - Cleaner, Vehicles	8.41
11060 - Elevator Operator	8.98
11090 - Gardener	10.33
11121 - House Keeping Aid I	8.02
11122 - House Keeping Aid II	8.55
11150 - Janitor	9.77
11210 - Laborer, Grounds Maintenance	10.01
11240 - Maid or Houseman	8.02
11270 - Pest Controller	9.96
11300 - Refuse Collector	8.50
11330 - Tractor Operator	10.78
11360 - Window Cleaner	10.24
12000 - Health Occupations	
12020 - Dental Assistant	15.91
12040 - Emergency Medical Technician (EMT)/Paramedic/Ambulance Driver	15.63
12071 - Licensed Practical Nurse I	12.67
12072 - Licensed Practical Nurse II	14.22
12073 - Licensed Practical Nurse III	15.91
12100 - Medical Assistant	11.56
12130 - Medical Laboratory Technician	12.93
12160 - Medical Record Clerk	9.77
12190 - Medical Record Technician	13.54
12221 - Nursing Assistant I	7.81
12222 - Nursing Assistant II	8.77
12223 - Nursing Assistant III	9.58
12224 - Nursing Assistant IV	10.74
12250 - Pharmacy Technician	12.68
12280 - Phlebotomist	12.93
12311 - Registered Nurse I	15.16
12312 - Registered Nurse II	18.54
12313 - Registered Nurse II, Specialist	18.54
12314 - Registered Nurse III	22.44
12315 - Registered Nurse III, Anesthetist	22.44
12316 - Registered Nurse IV	26.88
13000 - Information and Arts Occupations	
13002 - Audiovisual Librarian	16.43
13011 - Exhibits Specialist I	14.75
13012 - Exhibits Specialist II	18.28
13013 - Exhibits Specialist III	22.29
13041 - Illustrator I	14.75
13042 - Illustrator II	18.28
13043 - Illustrator III	22.29
13047 - Librarian	21.59
13050 - Library Technician	12.50
13071 - Photographer I	12.32
13072 - Photographer II	13.79
13073 - Photographer III	16.28
13074 - Photographer IV	19.85
13075 - Photographer V	24.10
15000 - Laundry, Dry Cleaning, Pressing and Related Occupations	
15010 - Assembler	7.83
15030 - Counter Attendant	7.83
15040 - Dry Cleaner	9.19
15070 - Finisher, Flatwork, Machine	7.83
15090 - Presser, Hand	7.83
15100 - Presser, Machine, Drycleaning	7.83
15130 - Presser, Machine, Shirts	7.83
15160 - Presser, Machine, Wearing Apparel, Laundry	7.83

15190 - Sewing Machine Operator	9.82
15220 - Tailor	10.61
15250 - Washer, Machine	8.37
19000 - Machine Tool Operation and Repair Occupations	
19010 - Machine-Tool Operator (Toolroom)	15.81
19040 - Tool and Die Maker	18.62
21000 - Material Handling and Packing Occupations	
21010 - Fuel Distribution System Operator	15.72
21020 - Material Coordinator	16.67
21030 - Material Expediter	16.26
21040 - Material Handling Laborer	11.50
21050 - Order Filler	12.83
21071 - Forklift Operator	14.49
21080 - Production Line Worker (Food Processing)	13.83
21100 - Shipping/Receiving Clerk	11.86
21130 - Shipping Packer	13.04
21140 - Store Worker I	10.63
21150 - Stock Clerk (Shelf Stocker; Store Worker II)	12.97
21210 - Tools and Parts Attendant	14.77
21400 - Warehouse Specialist	14.77
23000 - Mechanics and Maintenance and Repair Occupations	
23010 - Aircraft Mechanic	19.35
23040 - Aircraft Mechanic Helper	15.08
23050 - Aircraft Quality Control Inspector	20.13
23060 - Aircraft Servicer	16.83
23070 - Aircraft Worker	17.80
23100 - Appliance Mechanic	15.81
23120 - Bicycle Repairer	13.21
23125 - Cable Splicer	18.95
23130 - Carpenter, Maintenance	17.77
23140 - Carpet Layer	17.43
23160 - Electrician, Maintenance	19.91
23181 - Electronics Technician, Maintenance I	17.12
23182 - Electronics Technician, Maintenance II	18.68
23183 - Electronics Technician, Maintenance III	19.53
23260 - Fabric Worker	16.48
23290 - Fire Alarm System Mechanic	19.17
23310 - Fire Extinguisher Repairer	15.73
23340 - Fuel Distribution System Mechanic	18.13
23370 - General Maintenance Worker	15.16
23400 - Heating, Refrigeration and Air Conditioning Mechanic	16.48
23430 - Heavy Equipment Mechanic	19.98
23440 - Heavy Equipment Operator	19.81
23460 - Instrument Mechanic	18.95
23470 - Laborer	9.88
23500 - Locksmith	18.18
23530 - Machinery Maintenance Mechanic	18.33
23550 - Machinist, Maintenance	16.48
23580 - Maintenance Trades Helper	13.02
23640 - Millwright	16.48
23700 - Office Appliance Repairer	18.53
23740 - Painter, Aircraft	15.81
23760 - Painter, Maintenance	15.81
23790 - Pipefitter, Maintenance	22.33
23800 - Plumber, Maintenance	20.38
23820 - Pneudraulic Systems Mechanic	19.17
23850 - Rigger	18.95
23870 - Scale Mechanic	17.62
23890 - Sheet-Metal Worker, Maintenance	16.48
23910 - Small Engine Mechanic	15.16

23930 - Telecommunication Mechanic I	16.48
23931 - Telecommunication Mechanic II	17.14
23950 - Telephone Lineman	18.95
23960 - Welder, Combination, Maintenance	16.48
23965 - Well Driller	16.48
23970 - Woodcraft Worker	18.95
23980 - Woodworker	15.73
24000 - Personal Needs Occupations	
24570 - Child Care Attendant	9.01
24580 - Child Care Center Clerk	12.18
24600 - Chore Aid	8.39
24630 - Homemaker	15.72
25000 - Plant and System Operation Occupations	
25010 - Boiler Tender	18.52
25040 - Sewage Plant Operator	19.89
25070 - Stationary Engineer	18.52
25190 - Ventilation Equipment Tender	14.77
25210 - Water Treatment Plant Operator	19.89
27000 - Protective Service Occupations	
(not set) - Police Officer	24.05
27004 - Alarm Monitor	12.56
27006 - Corrections Officer	20.64
27010 - Court Security Officer	21.56
27040 - Detention Officer	20.64
27070 - Firefighter	19.07
27101 - Guard I	10.04
27102 - Guard II	14.44
28000 - Stevedoring/Longshoremen Occupations	
28010 - Blocker and Bracer	16.10
28020 - Hatch Tender	16.10
28030 - Line Handler	16.10
28040 - Stevedore I	14.69
28050 - Stevedore II	16.71
29000 - Technical Occupations	
21150 - Graphic Artist	20.78
29010 - Air Traffic Control Specialist, Center (2)	29.36
29011 - Air Traffic Control Specialist, Station (2)	20.24
29012 - Air Traffic Control Specialist, Terminal (2)	22.29
29023 - Archeological Technician I	14.44
29024 - Archeological Technician II	16.19
29025 - Archeological Technician III	20.01
29030 - Cartographic Technician	20.01
29035 - Computer Based Training (CBT) Specialist/ Instructor	23.30
29040 - Civil Engineering Technician	19.42
29061 - Drafter I	12.89
29062 - Drafter II	14.37
29063 - Drafter III	16.15
29064 - Drafter IV	20.01
29081 - Engineering Technician I	12.15
29082 - Engineering Technician II	13.56
29083 - Engineering Technician III	15.23
29084 - Engineering Technician IV	18.89
29085 - Engineering Technician V	23.03
29086 - Engineering Technician VI	27.95
29090 - Environmental Technician	17.73
29100 - Flight Simulator/Instructor (Pilot)	27.00
29160 - Instructor	19.30
29210 - Laboratory Technician	16.70
29240 - Mathematical Technician	17.23
29361 - Paralegal/Legal Assistant I	13.38

29362 - Paralegal/Legal Assistant II	17.34
29363 - Paralegal/Legal Assistant III	21.15
29364 - Paralegal/Legal Assistant IV	25.66
29390 - Photooptics Technician	16.81
29480 - Technical Writer	19.80
29491 - Unexploded Ordnance (UXO) Technician I	18.66
29492 - Unexploded Ordnance (UXO) Technician II	22.57
29493 - Unexploded Ordnance (UXO) Technician III	27.05
29494 - Unexploded (UXO) Safety Escort	18.66
29495 - Unexploded (UXO) Sweep Personnel	18.66
29620 - Weather Observer, Senior (3)	18.75
29621 - Weather Observer, Combined Upper Air and Surface Programs (3)	16.88
29622 - Weather Observer, Upper Air (3)	16.88
31000 - Transportation/ Mobile Equipment Operation Occupations	
31030 - Bus Driver	16.43
31260 - Parking and Lot Attendant	8.17
31290 - Shuttle Bus Driver	10.89
31300 - Taxi Driver	10.29
31361 - Truckdriver, Light Truck	10.64
31362 - Truckdriver, Medium Truck	16.92
31363 - Truckdriver, Heavy Truck	16.95
31364 - Truckdriver, Tractor-Trailer	16.95
99000 - Miscellaneous Occupations	
99020 - Animal Caretaker	8.35
99030 - Cashier	9.00
99041 - Carnival Equipment Operator	9.68
99042 - Carnival Equipment Repairer	10.19
99043 - Carnival Worker	8.07
99050 - Desk Clerk	9.01
99095 - Embalmer	18.66
99300 - Lifeguard	9.80
99310 - Mortician	18.66
99350 - Park Attendant (Aide)	12.31
99400 - Photofinishing Worker (Photo Lab Tech., Darkroom Tech)	10.56
99500 - Recreation Specialist	12.48
99510 - Recycling Worker	9.78
99610 - Sales Clerk	11.19
99620 - School Crossing Guard (Crosswalk Attendant)	9.88
99630 - Sport Official	9.80
99658 - Survey Party Chief (Chief of Party)	16.09
99659 - Surveying Technician (Instr. Person/Surveyor Asst./Instr.)	12.31
99660 - Surveying Aide	8.99
99690 - Swimming Pool Operator	9.38
99720 - Vending Machine Attendant	9.78
99730 - Vending Machine Repairer	11.24
99740 - Vending Machine Repairer Helper	9.78

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ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$2.36 an hour or \$94.40 a week or \$409.07 a month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 5 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE PARENTHESES AFTER THEM RECEIVE THE FOLLOWING BENEFITS (as numbered):

- 1) Does not apply to employees employed in a bona fide executive, administrative, or professional capacity as defined and delineated in 29 CFR 541. (See CFR 4.156)
- 2) APPLICABLE TO AIR TRAFFIC CONTROLLERS ONLY - NIGHT DIFFERENTIAL: An employee is entitled to pay for all work performed between the hours of 6:00 P.M. and 6:00 A.M. at the rate of basic pay plus a night pay differential amounting to 10 percent of the rate of basic pay.
- 3) WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

\*\* UNIFORM ALLOWANCE \*\*

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an

adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

\*\* NOTES APPLYING TO THIS WAGE DETERMINATION \*\*

Source of Occupational Title and Descriptions:

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations," Fourth Edition, January 1993, as amended by the Third Supplement, dated March 1997, unless otherwise indicated. This publication may be obtained from the Superintendent of Documents, at 202-783-3238, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Copies of specific job descriptions may also be obtained from the appropriate contracting officer.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See Section 4.6 (C) (vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation) and computes a proposed rate).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title), a Federal grade equivalency (FGE) for each proposed classification), job description), and rationale for proposed wage rate), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.

3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).

4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.

5) The contracting officer transmits the Wage and Hour decision to the contractor.

6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.