



**US Army Corps  
of Engineers®**  
Buffalo District

Solicitation No.  
W912P4-04-B-0012

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**EAST PIERHEAD REPAIR,  
CLEVELAND HARBOR,  
CLEVELAND, CUYAHOGA COUNTY, OH**

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**Construction Solicitation  
And Specifications**

August 2004

<b>SOLICITATION, OFFER, AND AWARD</b> <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO W912P4-04-B-0012	2. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID <i>(IFB)</i> <input type="checkbox"/> NEGOTIATED <i>(RFP)</i>	3. DATE ISSUED 8/23/04	PAGE OF PAGES 1
	IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.			

4. CONTRACT NO	5. REQUISITION/PURCHASE REQUEST NO W81EU642118825	6. PROJECT NO. E. Pierhead Repair, Cleveland Harbor
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7. ISSUED BY  Department of the Army US Army Engineer District, Buffalo 1776 Niagara Street Buffalo, NY 14207-3199	CODE	8. ADDRESS OFFER TO  Department of the Army US Army Engineer District, Buffalo ATTN: Contracting Division 1776 Niagara Street Buffalo, NY 14207-3199
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9. FOR INFORMATION CALL:	A. NAME Moira A. Restall	B. TELEPHONE NO <i>(include area code) (NO COLLECT CALLS)</i> (716) 879-4251
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**SOLICITATION**

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

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

THIS SOLICITATION AND ITS RESULTANT CONTRACT ARE ISSUED UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM OF THE BUSINESS OPPORTUNITY REFORM ACT OF 1988

THIS ACQUISITION IS NOT SET-ASIDE FOR SMALL BUSINESSES.

East Pierhead Repair, Cleveland Harbor, Cleveland, Cuyahoga County, OH, Solicitation No. W912P4-04-B-0012 dated 8/23/04.

Work consists of, but is not limited to, furnishing all plant, labor, materials necessary to perform removal and reinstallation of a small portion of the abutting breakwater, driving about 280 lineal feet of steel sheet pile wall parallel to the structure and replacing the existing concrete cap with new concrete at the East Pierhead, Cleveland, Cuyahoga County, OH.

Estimated magnitude of construction in terms of physical characteristics and estimated price range is between \$1,000,000 and \$5,000,000.

BID SUBMITTAL REQUIREMENTS: Pages 99919-1 and 00010-2, Bidding Schedule (Pages 00010-4 and 00010-5), Section 00600 entitled "Representations and Certifications" and a Bid Bond to be considered responsive.

A PRE-BID CONFERENCE will be held at the US Army Corps of Engineers, 1035 East 9th Street, Cleveland, OH 44114-1003 on September 9, 2004 at 10:00 AM.

11 The Contractor shall begin performance within 10 calendar days and complete it within 180 calendar days after receiving  award,  notice to proceed. This performance period is  mandatory,  negotiable. *(See Sec 00800, Para. 1.)*

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

13 ADDITIONAL SOLICITATION REQUIREMENTS:

A Sealed offers in original and only copies to perform the work required are due at the place specified in Item 8 by 3:00 PM (hour) local time 9/20/04 (date). If this is a sealed bid solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.

B An offer guarantee  is,  is not required.

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

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

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

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

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

AMOUNTS SEE PAGES 00010-4 AND 00010-5

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

**19 ACKNOWLEDGMENT OF AMENDMENTS**

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

AMENDMENT NO.										
DATE										

20A NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER <i>(Type or print)</i>	20B SIGNATURE	20C OFFER DATE
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**AWARD (To be completed by Government)**

21 ITEMS ACCEPTED:

22 AMOUNT	23 ACCOUNTING AND APPROPRIATION DATA  W81EU642118825
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24 SUBMIT INVOICES TO ADDRESS SHOWN IN <i>(4 Copies unless otherwise specified)</i>	ITEM    Sec 00100	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO <input type="checkbox"/> 10 U.S.C 2304(c) ( ) <input type="checkbox"/> 41 U.S.C 253(c) ( )
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26 ADMINISTERED BY                      CODE Department of the Army US Army Engineer District, Buffalo 1776 Niagara Street Buffalo, NY 14207-3199	27 PAYMENT WILL BE MADE BY USACE Finance Center ATTN: CEFC-AO-P 5720 Integrity Drive Millington, TN 38054-5045
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**CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE**

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

EAST PIERHEAD REPAIR,  
CLEVELAND HARBOR  
CLEVELAND, CUYAHOGA COUNTY, OH  
W912P4-04-B-0012

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SOLICITATION, OFFER, AND AWARD (SF1442) AND BIDDING SCHEDULE  
SECTION 00010

EAST PIERHEAD REPAIR  
CLEVELAND HARBOR, OHIO

<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Estimated Amount</u>
1.	Mobilization and Demobilization		LS		\$ _____
2.	As-Built Drawings		LS		\$ _____
3.	Removals		LS		\$ _____
4.	Removal of Obstructions - 5' to 20' Depth	200	CY	\$ _____	\$ _____
5.	Steel Sheet Piling, Type "A"	8,575	LF	\$ _____	\$ _____
6.	Steel Sheet Piling, Type "B"	130	LF	\$ _____	\$ _____
7.	Steel Sheet Piling, Type "C"	130	LF	\$ _____	\$ _____
8.	Steel Sheet Piling, Type "D"	15	LF	\$ _____	\$ _____
9.	Steel Sheet Piling, Type "E"	15	LF	\$ _____	\$ _____
10.	Steel Sheet Piling - Fabricated Section, Type "1"	15	LF	\$ _____	\$ _____
11.	Steel Sheet Piling - Fabricated Section, Type "2"	15	LF	\$ _____	\$ _____
12.	Cut-Offs	15	EA	\$ _____	\$ _____
13.	Splices	10	EA	\$ _____	\$ _____
14.	Granular Fill Material	1,200	TN	\$ _____	\$ _____
15.	Select Fill Material	500	TN	\$ _____	\$ _____
16.	Deformed Steel Bars for Concrete Reinforcement	10,400	LB	\$ _____	\$ _____
17.	Dowels	115	EA	\$ _____	\$ _____
18.	Reinforced Concrete Pierhead Cap	200	CY	\$ _____	\$ _____

<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Estimated Amount</u>
19.	Fabric Formed Concrete	45	CY	\$ _____	\$ _____
20.	Tremie Concrete	950	CY	\$ _____	\$ _____
21.	Coring	10	LF	\$ _____	\$ _____
22.	Wales	16,500	LB	\$ _____	\$ _____
23.	Tie Rods - 68'-72' Long	12	EA	\$ _____	\$ _____
24.	Galvanized Steel Pipe Railing		LS		\$ _____
25.	Fabricated Steel Cleats	2	EA	\$ _____	\$ _____
26.	Furnish and Install "No Trespassing" Sign	1	EA	\$ _____	\$ _____
				_____	
TOTAL ESTIMATED AMOUNT				\$ _____	

END OF SECTION 00010

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SECTION 00100  
INSTRUCTIONS, CONDITIONS, AND NOTICES TO BIDDERS

1 BID DEPOSITORY

Hand carried bids must be deposited, prior to the time set for opening of bids, in the bid depository, Contracting Division, Building No. 1, 1st Floor, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199.

2 PLACE OF BID OPENING

Bids shall be publicly opened in Conference Room "A", Building No. 1, 2nd Floor, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199.

3 INQUIRIES

For information regarding this Procurement, write or call (Collect calls not accepted) Mrs. Moira A. Restall, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199 - Area Code 716 - Telephone Number 879-4251.

4 WORK PERFORMED BY CONTRACTOR

The successful bidder/offeror must furnish the Contracting Officer within ten (10) days after the award, the items of work which he will perform with his own forces, the percentage of the total work this represents, and the estimated cost thereof. (See Section 00800, Special Contract Requirement entitled "Limitations on Subcontracting").

5 GOVERNMENT'S PRIVILEGE IN MAKING AWARDS

The Government further reserves the right to make award of any or all schedules of any bid/offer, unless the bidder/offeror qualifies such bid/offer by specific limitation; also to make award to the bidder/offeror whose aggregate bid/offer on any combination of bid schedules is low. For the purpose of this Solicitation, the word "item" as used in the paragraph entitled "Contract Award--Sealed Bidding--Construction," shall be considered to mean "schedule."

6 52.228-15 PERFORMANCE AND PAYMENT BONDS—CONSTRUCTION--  
(JULY 2000)

(a) *Definitions.* As used in this clause-  
"Original contract price" means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds.* Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

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

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

(3) *Additional bond protection.*

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

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

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

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

U.S. Department of Treasury  
 Financial Management Service  
 Surety Bond Branch  
 401 14<sup>th</sup> Street, NW, 2<sup>nd</sup> Floor, West Wing  
 Washington, DC 20227.

(e) *Notice of subcontractor waiver of protection (40 U.S.C. 270b(c)).* Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

7 52.233-2 SERVICE OF PROTEST (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from Chief, Contracting Division, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199.

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

(End of provision)

## 8 ARITHMETIC DISCREPANCIES

(a) For the purpose of initial evaluation of bids, the following will be utilized in resolving arithmetic discrepancies found on the face of the bidding schedule as submitted by bidders:

- (1) Obviously misplaced decimal points will be corrected
- (2) In case of discrepancy between unit price and extended price
- (3) Apparent errors in extension of unit prices will be corrected;
- (4) Apparent errors in addition of lump-sum and extended prices will be corrected.

(b) For the purpose of bid evaluation, the government will proceed on the assumption that the bidder intends his bid to be evaluated on the basis of the unit prices, the totals arrived at by resolution of arithmetic discrepancies as provided above and the bid will be so reflected on the abstract of bids.

## 9 BIDDER'S QUALIFICATIONS FAR 9.105-1

Before an offer is considered for award, the offeror may be requested by the Government to submit a statement regarding his previous experience in performing comparable work, his business and technical organization, financial resources, and plant available to be used in performing the work.

## 10 BID MODIFICATION

If a modification to a bid based on unit prices is submitted, which provides for a lump sum adjustment to the total estimated cost, the application of the lump sum adjustment to each unit price in the bid schedule must be stated. If it is not stated, the bidder agrees that the lump sum adjustment shall be applied on a pro-rata basis to every unit price in the bid schedule.

## 11 COMPLETION OF BID SCHEDULE

**BIDS MUST BE SUBMITTED ON ALL ITEMS OF THE BIDDING SCHEDULE. FAILURE TO COMPLETE ALL ITEMS OF THE BID SCHEDULE WILL RENDER THE BID NON-RESPONSIVE.**

## 12 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE

Whenever a contract or modification of contract price is negotiated, the Contractor's cost proposals for equipment ownership and operating expenses shall be determined in accordance with the requirements of the paragraph entitled "EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE," contained in the Special Contract Requirements section of the specifications. A copy of EP 1110-1-8 "Construction Equipment Ownership and Operating Expense Schedule" is available for review at the Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street,

Buffalo, NY 14207-3199; Foot of East 9th Street, Cleveland, OH 44114, and Summit Street, Bay View Park, Toledo, OH 43611.

(End of Clause)  
(EFARS 52.2/9108(f)(a))

### 13 INVOICES (OHIO AREA OFFICE)

Invoices shall be submitted in quadruplicate to the Area Office Point of Contact specified in the Section 00800 clause entitled "Physical Data":

### 14 LIST OF ATTACHMENTS

1. Preparatory Inspection Checklist
2. Initial Inspection Checklist
3. Contractor Quality Control Report
4. Standard Form 24, "Bid Bond" (Sample)
5. Standard Form 25, "Performance Bond" (Sample)
6. Standard Form 25-A, "Payment Bond" (Sample)
7. ENG Form 4025, "Transmittal of Shop Drawings, Equipment Data, Material Samples, or Manufacturer's Certificates of Compliance for Approval"
8. Submittal Register
9. General Decision Number OH030002 08/20/2004
10. Subsurface Logs by SJB Services, Inc.
11. Contractor Accident Prevention Plan Checklist
12. EM 385-1-1, US Army Corps of Engineers Safety and Health Requirements Manual (November 2003)
13. Contractor Quality Control Plan Checklist
14. Trip Report, Evaluation of the Cleveland Harbor Arrow Pier Heads, Cleveland Harbor, OH
15. Cleveland East and West Pierhead Dive Inspection Report
16. Gradation Curves for Riprap Filter and Bedding
17. Cleveland Harbor, Ohio (30 September 1989)
18. Sign Requirements (Page B13-6 and E.2)

These attachments are located at the end of this Solicitation.

### 15 PRE-BID CONFERENCE

A Pre-Bid Conference will be held for the purpose of providing bidders an opportunity to attend a briefing and to submit written questions concerning the requirements of this contract. Bidders shall submit their intention to attend the Pre-Bid Conference, in writing, or by FAX (FAX Number 716-879-4353) to Moira A. Restall. The Pre-Bid Conference will be held at the US Army Corps of Engineers, Cleveland Area Office, 1035 East 9<sup>th</sup> Street, Cleveland, OH 44114-1003 on September 9, 2004 at 10:00 AM..

16 PRE-CONSTRUCTION CONFERENCE (FEB 1995)

After award of a contract, a Preconstruction Conference will be conducted between responsible personnel of the Contractor, Area Office and District Office to discuss Government procedures and line authority for contractual, administrative, and construction matters. The successful Contractor will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

17 SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

This solicitation and its resultant contract are issued under the Small Business Competitiveness Demonstration Program of the Business Opportunity Development Reform Act of 1988.

18 SYNOPSIS OF SUBCONTRACT OPPORTUNITIES FAR 5.206(b)

Prime contractors and subcontractors are encouraged to use the Governmentwide Point of Entry (GPE) to publicize opportunities in the field of subcontracting stemming from defense business.

Transmittal of a synopsis are accomplished in the following manner:

- (a) GPE. Transmission must be in accordance with the interface description available via the Internet at <http://www.fedbizopps.gov>.
  - (b) CBD. All synopses transmitted electronically to the CBD, other than through the GPE, must be in ASCII Code.
- © Hard copy transmission. When electronic transmission if not feasible, synopses should be sent to the CBD via mail or other physical delivery of hard copy and should be addressed to the—

Commerce Business Daily  
U.S. Department of Commerce  
P. O. Box 77880  
Washington, DC 20013-8880

19 UNBALANCED BIDS

Bids submitted, that appear to be unbalanced, may be rejected in accordance with the clause entitled "Contract Award--Sealed Bidding--Construction" of Section 00100 - Instructions, Conditions, and Notices to Bidders"

20 WAGE DETERMINATION (Construction)

(a) The Department of Labor Wage Determination Decision referred to in Section 00700 - Contract Clauses of the solicitation is attached hereto and made a part hereof, Decision No. OH030002, and all amendments thereto.

(b) Classifications and rates applicable to this work are those used in the local area in the performance of Heavy and Highway construction.

21 52.252-2 CLAUSES INCORPORATED BY REFERENCE (Feb 1998)

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

52.204-6	Data Universal Numbering System ( DUNS) Number	OCT 2003
252.204-7001	Commercial and Government Entity (CAGE) Code Reporting	AUG 1999
252.204-7004	Required Central Contractor Registration	NOV 2001
52.211-2	Availability of Specifications Listed in the DoD Index of Specifications and Standards (DODISS) and Descriptions Listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12-L	DEC 2003
52.214-3	Amendments to Invitations for Bids	DEC 1989
52.214-4	False Statements in Bids	APR 1984
52.214-5	Submission of Bids	MAR 1997
52.214-6	Explanation to Prospective Bidders	APR 1984
52.214-7	Late Submissions, Modifications, and Withdrawals of Bids	NOV 1999
52.214-18	Preparation of Bids - Construction	APR 1984
52.214-19	Contract Award - Sealed Bidding Construction	AUG 1996
52.216-1	Type of Contract	APR 1984
252.219-7003	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts)	APR 1996
52.222-23	Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction	FEB 1999
52.228-1	Bid Guarantee	SEP 1996
52.228-11	Pledges of Assets	FEB 1992
52.232-33	Payment by Electronic Funds Transfer -- Central Contractor Registration	OCT 2003
252.236-7000	Modification Proposals - Price Breakdown	DEC 1991
252.236-7008	Contract Prices - Bidding Schedules	DEC 1991

(End of Clause)

22 REAL ESTATE

(a) Real Estate Rights. Rights for the use of the work areas under the contract have been provided, and the general limits of the areas are shown on the contract drawings. Conformance to all applicable requirements of the agreement is required. Copies of the agreements are available for inspection at the Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199. Two copies of each agreement will be furnished to the Contractor awarded the contract work.

(b) Additional Real Estate Rights. Any additional real estate rights desired by the Contractor shall be obtained by the Contractor at his own expense. Copies of any such agreements shall be furnished to the Contracting Officer for approval before entering thereon. Such agreements shall clearly relieve the U.S. Government of any responsibility for damages resulting from the use of such real estate.



SECTION 00600  
REPRESENTATIONS & CERTIFICATIONS

1	52.203-2	CERTIFICATE OF INDEPENDENT PRICE DETERMINATION
2	52.204-3	TAXPAYER IDENTIFICATION
3	52.204-5	WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS)
4	52.209-5	CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS
5	252.209-7001	DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY
6	52.219-1	SMALL BUSINESS PROGRAM REPRESENTATIONS
7	52.219-2	EQUAL LOW BIDS
8	52.219-19	SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM
9	52.222-22	PREVIOUS CONTRACTS AND COMPLIANCE REPORTS
10	52.222-38	COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS
11	52.223-13	CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING
12		AFFILIATED BIDDERS
13		REMIT TO ADDRESS
14		CLAUSES INCORPORATED BY REFERENCE

SECTION 00600  
REPRESENTATIONS & CERTIFICATIONS

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 of factors used to calculate the prices offered:

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

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

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

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

(2) (i) Has been authorized, in writing, to act as an agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above \_\_\_\_\_ (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) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

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

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

(End of clause)

2      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-----

(End of provision)

3 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 a women-owned business concern.

(End of provision)

4 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

(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 subdivision (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.

5 252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A  
TERRORIST COUNTRY (MAR 1998)

(a) "Definitions."

As used in this provision --

(a) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for such acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means --

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) "Prohibition on award."

In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) "Disclosure."

If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include --

- (1) Identification of each government holding a significant interest; and
  - (2) A description of the significant interest held by each government.
- (End of provision)

6 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (MAR 2001)

(a)

- (1) The North American Industry Classification System (NAICS) code for this acquisition is 237990.
- (2) The small business size standard is \$28.5 million.
- (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.

(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," 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," 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) 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.

(6) [Complete only if 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.

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

\_\_\_ Black American.

\_\_\_ Hispanic American.

\_\_\_ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

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

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

\_\_\_ Individual/concern, other than one of the preceding.

7 52.219-2 EQUAL LOW BIDS. (OCT 1995)

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

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(c) Failure to identify the labor surplus area as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

8 52.219-19 SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JAN 1997)

(a) Definition.

"Emerging small business" as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

(b) [Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.] The Offeror / / is, / / is not an emerging small business.

(c) (Complete only if the Offeror is a small business or an emerging small business, indicating its size range.)

Offeror's number of employees for the past 12 months (check this column if size standard stated in solicitation is expressed in terms of number of employees) or Offeror's average annual gross revenue for the last 3 fiscal years (check this column if size standard stated in solicitation is expressed in terms of annual receipts). (Check one of the following.)

No. of Employees    Avg. Annual Gross Revenues

\_\_\_ 50 or fewer    \_\_\_ \$1 million or less  
 \_\_\_ 51 - 100       \_\_\_ \$1,000,001 - \$2 million  
 \_\_\_ 101 - 250     \_\_\_ \$2,000,001 - \$3.5 million  
 \_\_\_ 251 - 500     \_\_\_ \$3,500,001 - \$5 million  
 \_\_\_ 501 - 750     \_\_\_ \$5,000,001 - \$10 million  
 \_\_\_ 751 - 1,000   \_\_\_ \$10,000,001 - \$17 million  
 \_\_\_ Over 1,000    \_\_\_ Over \$17 million

(End of provision)

9        52.222-22    PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that --

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

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

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

(End of provision)

10       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.

(End of provision)

11       52.223-13    CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING  
(OCT 1996)

(a)        Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(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 under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(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) designations 20 through 39 as set forth in FAR section 19.102 of the Federal Acquisition Regulation; or

(v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

## 12 AFFILIATED BIDDERS

(a) Business concerns are affiliates of each other when, either directly or indirectly--

- (1) One concern controls or has the power to control the other; or
- (2) A third party controls or has the power to control both.

(b) Each bidder shall submit with its bid an affidavit stating that it has no affiliates, or containing the following information:

(1) The names and addresses of all affiliates of the bidder.

(2) The names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of its affiliates, and whether they exercise such control or ownership as common officers, directors, stockholders holding controlling interest, or otherwise.

(End of provision)

## 13 PLANT AVAILABLE

Each bidder/offeror shall list, on the Schedule below, plant available and proposed for use on the work under this Solicitation.

14 REMIT TO ADDRESS

The bidder/offeror shall insert below the address to which all contract payments shall be mailed.

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The Contractor shall notify the Contracting Officer, in writing, of any change to this address. A contract modification will be required.

In accordance with the "Prompt Payment" clause of this contract, any invoice which specifies a payment address differing from that shown above, will be returned without action.

15 CLAUSES INCORPORATED BY REFERENCE

52.203-11	Certification and Disclosure Regarding Payment to Influence Certain Federal Transactions	APR 1991
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**SECTION 00700**  
**CONTRACT CLAUSES**

1        252.201-7000    CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) Definition. "Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

2        52.203-5        COVENANT AGAINST CONTINGENT FEES (Apr 1984)

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.

(End of clause)

3        52.204-7        CENTRAL CONTRACTOR REGISTRATION (OCT 2003)

(a) Definitions. As used in this clause-

"Central Contractor Registration (CCR) database" means the primary Government repository for Contractor information required for the conduct of business with the Government.  
"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

"Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion

of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same parent concern.

"Registered in the CCR database" means that-

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields and has marked the record "Active".

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

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

(1) An offeror may obtain a DUNS number-

(i) 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.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and Zip Code.

(iv) Company Mailing Address, City, State and Zip Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)

(1)

(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

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

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

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

(End of clause)

4 52.225-9 BUY AMERICAN ACT-CONSTRUCTION MATERIALS (MAY 2002)

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

"Cost of components" means-

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

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

"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.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) *Domestic preference.*

(1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows:

None

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

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements 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)(3) of this clause shall include adequate information for Government evaluation of the request, including-

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

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

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

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

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

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

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

(2) If the Government determines after contract award that an exception to the Buy American 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)(3)(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 Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Price (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.]			



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(Name)

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(Title)

---

(Date)

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

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

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

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

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

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

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

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

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

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

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

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the

Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

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

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

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

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

(End of clause)

6 52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (MAY 1997)

Notwithstanding any other payment terms 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 section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice Payments.

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

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

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

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

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

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or

services completed by the Contractor, whichever is later. If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice, with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of mailing or transmission.)

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

(iv) Description of work or services performed.

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

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

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

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

(ix) Any other information or documentation required by the contract.

(x) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(3) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of the contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays 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. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(5) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) Additional interest penalty.

(i) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with subdivision (a)(6)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor--

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

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

(ii) (A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors 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) Demands must be postmarked on or before the 40th day after payment was made, except that--

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii) (A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty that is due on or after January 22, 1990, except--

(1) For additional penalties due on or before January 22, 1992, such penalties shall not exceed \$2,500;

(2) After January 22, 1992, the additional penalty shall not exceed \$5,000;

(3) The additional penalty shall never be less than \$25; and

(4) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(4)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(6)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) contract financing payments.

(1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the 30th day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing

request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

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

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

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

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

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

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

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

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

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

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

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment

request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

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

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

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

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

(i) Make such payment within--

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

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

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon--

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--

(A) The amounts withheld under subparagraph (e)(1) of this clause; and states that such withholding began and ended; and

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

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

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

(f) Third-party deficiency reports.

(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause--

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

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

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

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

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(iii) Written notice of subcontractor withholding. A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying--

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) The contractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the subcontractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

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

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

(End of clause)

7 52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including

acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

8 52.244-2 SUBCONTRACTS

(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:

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(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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(End of clause)

9 AUTHORIZED DEVIATIONS IN CLAUSES

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

10 BASIS FOR SETTLEMENT OF PROPOSALS

Actual costs will be used to determine equipment cost for a settlement proposal submitted on the total cost basis under FAR 49.206-2(b). In evaluating a termination settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

(1) Actual costs for each piece of equipment, or groups of similar serial or series equipment, need not be available in the contractor's accounting records to determine total actual equipment costs.

(2) If equipment costs have been allocated to a contract using predetermined rates, those charges will be adjusted to actual costs.

(3) Recorded job costs adjusted for unallowable and unallocable expenses will be used to determine equipment operating expenses.

(4) Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of FAR 31.205-11).

(5) License, taxes, storage and insurance costs are normally recovered as an indirect expense and unless the contractor charges these costs directly to contracts, they will be recovered through the indirect expense rate.

11 DEFINITIONS (JUL 1989) (DEVIATION) EFARS 52.202-10001

(This clause is applicable if the contract number begins with DACW)

(a) The term "head of the agency" or "Secretary" as used herein means the Secretary of the Army; and the term "his duly authorized representative" means the Chief of Engineers, Department of the Army, or an individual or board designated by him.

(b) The agency board of contract appeals having jurisdiction over all appeals from final decisions of the Contracting Officer under the Contract Disputes Act of 1978 is the Corps of Engineers Board of Contract Appeals, Office of the Chief of Engineers, Pulaski Building, 20 Massachusetts Avenue, N.W., Washington, D.C. 20314-1000.

## 12 ENVIRONMENTAL LITIGATION (1974 NOV OCE)

(a) If the performance of all or any part of the work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, the Contracting Officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor or a Subcontractor at any tier not required by the terms of this contract. If it is determined that the order is not due in any part to acts or omissions of the Contractor or a Subcontractor at any tier other than as required by the terms of this contract, such suspension, delay, or interruption shall be considered as if ordered by the Contracting Officer in the administration of this contract under the terms of the "Suspension of Work" clause of this contract. The period of such suspension, delay or interruption shall be considered unreasonable, and an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) as provided in that clause, subject to all the provisions thereof.

(b) The term "environmental litigation", as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that the Government has not duly considered, either substantively or procedurally, the effect of the work on the environment.

(End of Clause)

## 13 FINAL EXAMINATION AND ACCEPTANCE (1965 APR OCE)

(a) As soon as practicable after the completion of the entire work or any section thereof (if the work is divided into sections) as in the opinion of the Contracting Officer will not be subject to damage by further operations under the contract, such work will be thoroughly examined at the cost and expense of the Government by sounding or by sweeping, or both, as determined by the Contracting Officer. Should any shoals, lumps, or other lack of contract depth be disclosed by this examination the Contractor will be required to remove same by dragging the bottom or by dredging at the contract rate for dredging, but if the bottom is soft and the shoal areas are small and form no material obstruction to navigation, the removal of such shoal may be waived by the discretion of the Contracting Officer. The Contractor or his authorized representative will be notified when soundings and/or sweepings are to be made, and will be permitted to accompany the survey party. When the area is found to be in a satisfactory condition, it will be accepted finally. Should more than two sounding or sweeping operations by the Government over an area be necessary be reason of work for the removal of shoals disclosed at a prior sounding or sweeping, the cost of such third and any subsequent sounding or sweeping operations will be charged against the Contractor at the rate of \$1,500.00 per day for each day in which the Government plant is engaged in sounding or sweeping and/or is enroute to or from the site or held at or near the said site for such operations.

(b) Final acceptance of the whole or a part of the work and the deductions or corrections of deductions made thereon will not be reopened after having once been made, except on evidence of collusion, fraud, or obvious

error, and the acceptance of a completed section shall not change the time of payment of the retained percentages of the whole or any part of the work.

(End of Clause)

## 14 INSPECTION

The Bidder is invited, urged, and cautioned to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Solicitation.

## 15 CLAUSES INCORPORATED BY REFERENCE

52.203-3	Gratuities	APR 1984
52.203-7	Anti-Kickback Procedures	JUL 1995
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	JAN 1997
52.203-10	Price of Fee Adjustment for Illegal or Improper Activity	JAN 1997
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	JUN 1997
52.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense	MAR 1999
	Contract-Related Felonies	
52.204-4	Printing/Copying Double-Sided on Recycled Paper	AUG 2000
252.204-7003	Control of Government Personnel Work Product	APR 1992
52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or proposed for Debarment	JUL 1995
52.214-26	Audit and Records--Sealed Bidding	OCT 1997
52.214-27	Price Reduction for Defective Cost or Pricing Data - Modifications	OCT 1997
	Sealed Bidding	
52.214-28	Subcontracting Cost or Pricing Data--Modifications--Sealed Bidding	OCT 1997
52.214-29	Order of Precedence--Sealed Bidding	JAN 1986
52.219-8	Utilization of Small Business Concerns	OCT 1999
52.219-9 Alt I	Small Business Subcontracting Plan	JAN 2002
52.219-16	Liquidated Damages - Subcontracting Plan	JAN 1999
52.222-1	Notice to the Government of Labor Disputes	FEB 1997
52.222-3	Convict Labor	AUG 1996
52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation	JUL 1995
52.222-6	Davis Bacon Act	FEB 1995
52.222-7	Withholding of Funds	FEB 1988
52.222-8	Payrolls and Basic Records	FEB 1988
52.222-9	Apprentices and Trainees	FEB 1988
52.222-10	Compliance with Copeland Act Requirements	FEB 1988
52.222-11	Subcontracts (Labor Standards)	FEB 1988
52.222-12	Contract Termination - Debarment	FEB 1988
52.222-13	Compliance with Davis-Bacon and Related Act Regulations	FEB 1988
52.222-14	Disputes Concerning Labor Standards	FEB 1988
52.222-15	Certifications of Eligibility	FEB 1988
52.222-21	Prohibition of Segregated Facilities	FEB 1999
52.222-26	Equal Opportunity	FEB 1999
52.222-27	Affirmative Action Compliance Requirements for Construction	FEB 1999
52.222-35	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era	FEB 1999
52.222-36	Affirmative Action for Workers with Disabilities	JUN 1998
52.222-37	Employment Reports on Disabled Veterans and Veterans of the Vietnam Era	JAN 1999
52.223-6	Drug-Free Workplace	MAY 2001
52.223-14	Toxic Chemical Release Reporting	AUG 2003
52.225-13	Restrictions on Certain Foreign Purchases	OCT 2003
52.227-1	Authorization and Consent	JULY 1995
52.227-4	Patent Indemnity—Construction Contracts	APR 1984

52.228-2	Additional Bond Security	OCT 1997
52.228-12	Prospective Subcontractor Requests for Bonds	OCT 1995
52.229-3	Federal, State, and Local Taxes	APR 2003
252.231-7000	Supplemental Cost Principles	DEC 1991
52.232-17	Interest	JUNE 1996
52.232-23	Assignment of Claims	JAN 1986
52.233-1	Disputes	DEC 1998
52.233-3	Protest After Award	AUG 1996
52.236-2	Differing Site Conditions	APR 1984
52.236-3	Site Investigation and Conditions Affecting the Work	APR 1984
52.236-5	Material and Workmanship	APR 1984
52.236-6	Superintendence by the Contractor	APR 1984
52.236-7	Permits and Responsibilities	NOV 1991
52.236-8	Other Contracts	APR 1984
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	APR 1984
52.236-10	Operations and Storage Areas	APR 1984
52.236-11	Use and Possession Prior to Completion	APR 1984
52.236-12	Cleaning Up	APR 1984
52.236-13	Accident Prevention	NOV 1991
52.236-21	Specifications and Drawings for Construction	FEB 1997
252.236-7000	Modification Proposals - Price Breakdown	DEC 1991
52.242-13	Bankruptcy	JUL 1995
52.242-14	Suspension of Work	APR 1984
52.243-4	Changes	AUG 1987
252.243-7001	Pricing of Contract Modifications	DEC 1991
52.246-12	Inspection of Construction	AUG 1996
52.248-3 Alt I	Value Engineering - Construction (FEB 2000) - Alternate I	APR 1989
52.249-2 Alt I	Termination for Convenience of the Government (Fixed Price)	SEP 1996
52.249-10	Default (Fixed-Price Construction)	APR 1984
52.253-1	Computer Generated Forms	JAN 1991

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SECTION 00800  
SPECIAL CONTRACT REQUIREMENTS

1 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK

The Contractor shall be required to (a) commence work under this contract within ten (10) calendar days after the date of receipt by the Contractor of the Notice to Proceed, (b) prosecute said work diligently, and (c) complete the entire work ready for use not later than One Hundred Eighty (180) calendar days from the date the Contractor receives the written Notice to Proceed. The time stated for completion shall include final cleanup of the premises.

2 52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (APR 1984)

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to the Government as liquidated damages, the sum of \$717.00 for each day of delay.

(b) If the Government terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If the Government does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

3 252.236-7001 CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS

(a) The CD-Rom disc furnished by the Government for solicitation of bids/offers includes an electronic copy of the contract drawings, maps and specifications without charge except applicable publications incorporated into the specifications by reference. Large scale paper or mylar copies of the plans and paper copies of the specifications may be produced at the Contractor's expense from the CD-ROM. The work shall conform to the following contract drawings and maps, all of which form a part of the contractual documents.

<u>Title</u>	<u>File</u>	<u>Drawing No.</u>
General Plan	1 of 8	04-CLV- 2/1
Existing Conditions and Removals Plan	2 of 8	04-CLV- 2/2
Plan of New Work (1 of 2)	3 of 8	04-HWR-2/3
Plan of New Work (2 of 2)	4 of 8	04-HWR-2/4
Typical Section North South	5 of 8	04-HWR-2/5
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Sheet Pile Details	7 of 8	04-HWR-2/7
Miscellaneous Details	8 of 8	04-HWR-2/8

**Reference Drawings**

Existing Structure

3 of 5

80-CEP-1/3

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

(c) The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the Contracting Officer of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large scale drawings shall in general govern small scale drawings. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

**4 EXECUTION OF PERIODS IN COMPUTING COMPLETION SCHEDULES (JAN 1965)**

No work will be required during the period between 1 December and 31 March inclusive and such period has not been considered in computing the time allowed for completion. The Contractor may, however, perform work during all or any part of this period upon giving prior written notice to the Contracting Officer. If the work performed during such period is less than the average monthly work necessary to complete the contract within the time specified and the Contracting Officer maintains an inspection force during this period to inspect the work, the Contractor will be charged the percentage of the cost of maintaining such force that his work is less than the average monthly work necessary to complete the contract within the time specified.

**5 52.231-5000 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE  
EFARS 31.105(d)(2)(i)(A)**

(a) Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a Contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series equipment from the Contractor's accounting records, costs for that equipment shall be based upon the applicable provisions of EP 1110-1-8, "Construction Equipment Ownership and Operating Expense Schedule," Region II. Working conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the Contracting Officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the schedule. For forward pricing, the schedule in effect at the time of negotiations shall apply. For retrospective pricing, the schedule in effect at the time the work was performed shall apply.

(b) Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36 substantiated by certified copies of paid invoices. Rates for equipment rented from an organization under common control, lease-purchase or sale-leaseback arrangements will be determined using the schedule except that rental costs leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees are allowable. Costs for major repairs and overhaul are unallowable.

(c) When actual equipment costs are proposed and the total amount of the pricing action is over \$25,000, cost or pricing data shall be submitted on Standard Form 1411, "Contract Pricing Proposal Cover Sheet." By submitting cost or pricing data, the Contractor grants to the Contracting Officer or an authorized representative the right to examine those books, records, documents and other supporting data that will permit evaluation of the proposed equipment costs. After price agreement the Contractor shall certify that the equipment costs or pricing data submitted are accurate, complete and current.

#### 6 CERTIFICATES OF COMPLIANCE (1969 MAY OCE)

Any Certificates required for demonstrating proof of compliance of materials with specification requirements shall be executed in five (5) copies. Each certificate shall be signed by an official authorized to certify in behalf of the manufacturing company and shall contain the name and address of the Contractor, the project name and location, and the quantity and date or dates of shipment or delivery to which the certificates apply. Copies of laboratory test reports submitted with certificates shall contain the name and address of the testing laboratory and the date or dates of the tests to which the report applies. Certification shall not be construed as relieving the Contractor from furnishing satisfactory material, if, after tests are performed on selected samples, the material is found not to meet the specific requirements.

(End of Clause)  
(EFARS 52.2/9109©)

#### 7 LAYOUT OF WORK (1965 APR OCE)

(a) The Government has established bench marks and horizontal control points at the site of the work. These are described and indicated on contract drawings.

(b) From these control points the Contractor shall lay out the work by establishing all lines and grades at the site necessary to control the work and shall be responsible for all measurements that may be required for the execution of the work to the location and limit marks prescribed in the specifications or on the contract drawings. The Contractor shall establish and maintain at the site of the work the following horizontal and vertical controls:

See Specifications and Contract Drawings

The above are minimum requirements and the contractor shall place and establish such additional stakes and markers as may be necessary for control and guidance of his construction operations. All survey data shall be recorded in accordance with standard and approved methods. All field notes, sketches, recordings and computations made by the Contractor in establishing above horizontal and vertical control

points shall be available at all times during the progress of the work for ready examination by the contracting officer or his duly authorized representative.

(c) The contractor shall furnish, at his own expense, all such stakes, spikes, steel pins, templates, platforms, equipment, tools and material and all labor as may be required in laying out any part of the work from the control points established by the Government. It shall be the responsibility of the contractor to maintain and preserve all stakes and other markers established by him until authorized to remove them. If any of the control points established at the site by the Government are destroyed by or through the negligence of the Contractor prior to their authorized removal, they may be replaced by the Contracting Officer, and the expense of replacement will be deducted from any amount due or which may become due the Contractor. The Contracting Officer may require that work be suspended at any time when horizontal and vertical control points established at the site by the Contractor are not reasonably adequate to permit checking the work. Such suspension will be withdrawn upon proper replacement of the control points.

(End of Clause)

(EFARS 52.2/9109 © (b))

#### 8 DAMAGE TO WORK (1966 MAR OCE)

The responsibility for damage to any part of the permanent work shall be as set forth in the clause of the contract entitled "Permits and Responsibilities". However, if, in the judgment of the Contracting Officer, any part of the permanent work performed by the Contractor is damaged by flood or earthquake, which damage is not due to the failure of the Contractor to take reasonable precautions or to exercise sound engineering and construction practices in the conduct of the work, the Contractor will make the repairs as ordered by the Contracting Officer and full compensation for such repairs will be made at the applicable contract unit or lump sum prices as fixed and established in the contract. If, in the opinion of the Contracting Officer, there are no contract unit or lump sum prices applicable to any part of such work an equitable adjustment pursuant to the Contract Clause entitled "Changes" of the contract, will be made as full compensation for the repairs of that part of the permanent work for which there are no applicable contract unit or lump sum prices. Except as herein provided damage to all work (including temporary construction), utilities, materials, equipment and plant shall be repaired to the satisfaction of the Contracting Officer at the Contractor's expense, regardless of the cause of such damage.

(End of Clause)

(EFARS 52.2/9109 © (d)(1))

#### 9 CONTRACTOR SUBMITTAL PROCEDURES ER 415-1-10

Within ten (10) days after receipt of notice to proceed, the Contractor shall complete and submit to the Contracting Officer, in duplicate, a Submittal Register listing all submittals and dates. In addition to those items listed on the Submittal Register, the Contractor shall furnish submittals for any deviation from the plans and specifications. The scheduled need dates must be recorded on the document for each item for control purposes. In preparing the document, adequate time (minimum of 30 days) will be allowed for review and approval and possible resubmittal. Scheduling shall be coordinated with the approved progress schedule. The Contractor's Quality Control representative shall review the listing at least every 30 days and take appropriate action to maintain an effective system. Copies of updated or

corrected listing shall be submitted to the Contracting Officer at least every 60 days in the quantity specified. Payment will not be made for any material or equipment which does not comply with contract requirements.

(a) The Submittal Register is listed as an attachment in Section 00100. This form has been completed to show those technical items the Contractor shall submit to the Contracting Officer, as indicated in the contract requirements. The Contractor may reproduce this form for its use or obtain a supply of the forms from the Government. The furnished listing shall not relieve the Contractor of its obligation to comply with the specifications for items not on the listing.

(b) TRANSMITTAL OF SUBMITTALS. All items which are to be submitted to the Contracting Officer for approval shall be transmitted with ENG Form 4025, entitled "Transmittal of Shop Drawings, Equipment Data, Material Sample, or Manufacturer's Certificates of Compliance", and is listed as an attachment in Section 00100.

(c) CONTRACTOR'S ACCIDENT PREVENTION PLAN FORMAT, shall be in accordance with Appendix A of the "Safety and Health Requirements Manual", EM 385-1-1, 3 November 2003. A "Contractor Accident Prevention Plan Checklist," included as an attachment, shall be completed by the Contractor and submitted with the Contractor's "Accident Prevention Plan."

10 TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER (OCT 89) ER 415-1-15

1. This provision specifies the procedures for determination of time extensions for unusually severe weather in accordance with the contract clause entitled "Default: (Fixed Price Construction)". In order for the Contracting Officer to award a time extension under this clause, the following conditions must be satisfied:

a. The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.

b. The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the Contractor.

2. The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location and will constitute the base line for monthly weather time evaluations. The Contractor's progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY  
WORK DAYS BASED ON (5) DAY WORK WEEK

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
31	28	31	5	6	6	4	4	4	5	5	31

3. Upon acknowledgment of the Notice to Proceed (NTP) and continuing throughout the contract, the Contractor will record on the daily CQC report, the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical activities for 50 percent or more of the Contractor's scheduled work day.

The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in paragraph 2, above, the Contracting Officer will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and issue a modification in accordance with the contract clause entitled "Default (Fixed Price Construction)".

11 52.236-4 PHYSICAL DATA (APR 1984)

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

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations, historical data, and subsurface explorations. The physical conditions shown on the drawings are indicative of those that prevailed at the time of construction. Significant variations that would require changes to the plans or specifications shall be reported to the Contracting Officer immediately.

(b) Weather Conditions. The Contractor shall investigate and satisfy himself as to all hazards likely to arise from weather conditions during the performance of the work. Climatological data may be obtained from the Department of Commerce, National Oceanic & Atmospheric Administration, National Weather Service for the Cleveland, Ohio station located at the Cleveland-Hopkins International Airport.

(c) Transportation Facilities. The location is served by railroads and major highways. The Contractor shall investigate and obtain the necessary information and data as to the availability and use of access roads and highways to the site of the work. The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary permits to operate on or cross public highways and roads in connection with the prosecution of the contract work. See Section 00700, "Contract Clauses", the clause entitled "Permits and Responsibilities".

(d) Lake Levels. The Contractor is expected to acquaint himself with possible sudden changes in lake levels, which may interfere with the required work. Monthly bulletins of lake levels are published by the Corps of Engineers, and may be obtained from the Department of the Army, Detroit District, Corps of Engineers, ATTN: CELRE-EP-HW, P. O. Box 1027, Detroit, MI 48231-1027.

(e) Ice. Ordinarily heavy windrowed ice is not encountered in the work area after 1 April, but in the event it is encountered, it will be necessary to alter work procedure depending on where windrowed ice is located. The possibility also exists the Cleveland Harbor may be frozen over on April 15<sup>th</sup>.

(f) Local Conditions. Up-to-date Federal and City regulations governing the use, navigation and administration of Cleveland Harbor are published in the latest issue of the "United States Coast Pilot 6", by the US Department of Commerce, National Oceanic and Atmospheric Administration. Traffic during the navigation season consists of small craft, tugs, motor vessels, barges and other classes of vessels. The Contractor, in planning the schedule of operations, must take into account vessels using the harbor area. The "United States Coast Pilot 6" may be obtained from the Director, Charting and Geodetic Services (N/CG 223), National Oceanic Service NOAA, Rockville, MD 20852-3806.

## 12 DISPOSAL AREA

The Contractor shall dispose of broken concrete, steel pipe railing, steel sheet piling, waste materials and debris at his/her own expense, in an off-site disposal area obtained by the Contractor and meeting the approval of the Contracting Officer as stipulated in the Specification.

## 13 MARKING AND LIGHTING OF EQUIPMENT

(a) When not in use, all booms and similar unusually high equipment shall be lowered to below the equipment's fixed highest point. Tips of booms shall also be marked by a red light continuously lit day and night.

(b) Top 15 feet of booms shall be painted with fluorescent orange Federal Standard 595B, color 38903 or equal.

(c) All Contractor work vehicles shall be identified by company name.

## 14 RESTORATION

The Contractor shall be responsible for all damages in accordance with the Section 00700 "Contract Clause" entitled "Permits and Responsibilities". Areas within the required work areas which are damaged by the Contractor's operations shall be restored in accordance with the requirements of the applicable section of the specifications.

## 15 SAFETY REQUIREMENTS

(a) General. Contract Clause entitled "Accident Prevention" of this contract requires compliance with all pertinent provisions of Corps of Engineers Manual, EM 385-1-1 dated 3 November 2003 entitled "Safety and Health Requirements Manual." Engineer Manual EM 385-1-1 is included as an attachment to this solicitation. The Contractor will be required to comply with OSHA standards and acquaint himself with any changes to those standards and the Corps of Engineers Safety and Health Requirements Manual (EM 385-1-1).

(b) Activity Hazard Analysis. The "Accident Prevention Plan" required by EM 385-1-1 shall include, as a separate attachment, a detailed Activity Hazard Analysis of each phase of work. This analysis shall list all anticipated hazards and specific actions to be taken by the Contractor to prevent injury to personnel or property damage from such hazards. For projects involving major phases of work

in successive stages, separate analysis shall be submitted for each such phase immediately prior to commencement of that phase. The analysis for the first phase or in the case of smaller projects, the analysis for the entire project shall be submitted with the "Accident Prevention Plan" required by Contract Clauses prior to the pre-construction conference. The Contractor's submittals will be reviewed for acceptance by designated Government personnel prior to the start of any work under this contract. Additionally, the Contractor shall complete the "Contractor Accident Prevention Plan Checklist" which is included as an attachment to this solicitation.

(c) Additional Restrictions. The Contractor is advised that under no circumstances shall a crane operator be allowed to work in excess of ten (10) hours in any one (1) day. It further restricts this operator from functioning in any other capacity and work in excess of ten (10) hours per day.

#### 16 TRAFFIC CONTROL

Maintenance of traffic and the protection of the traveling public approaching the construction area and within the limits of construction shall be the Contractor's responsibility as specified herein. The Contractor shall perform the work under this contract in a manner as to ensure the least inconvenience to traffic and shall maintain such traffic at all times within the least interference consistent with the prosecution of the work and the safety of the public. The Contractor shall furnish, erect, and maintain at intersections, at street cutoffs, and throughout the project all necessary barricades, flashing warning lights, steady burn lights, reflectors and signs to the satisfaction of the Contracting Officer. The Contractor shall provide sufficient competent flagman as required. All flagmen shall wear fluorescent vests and use fluorescent flags. The Contractor plan for traffic control, detailing the aforementioned measures, shall be submitted for approval to the Contracting Officer no less than five (5) days prior to commencement of construction.

#### 17 UNAVAILABILITY UTILITY SERVICES

The responsibility shall be upon the contractor to provide and maintain at his own expense, adequate utilities for his use for construction and domestic consumption, and to install and maintain necessary connections and lines for same, but only at such locations and in such manner as may be approved by the Contracting Officer. Before final acceptance, temporary connections and lines installed by the Contractor shall be removed in a manner satisfactory to the Contracting Officer.

#### 18 USE OF LOCAL ROADS

The Contractor will be responsible for making all arrangements with local Government officials or owners for use of public and private roads and streets for the operations, and shall conform to all requirements regarding such use. All costs in connection therewith shall be borne by the Contractor.

## 19 252.236-7004 PAYMENT FOR MOBILIZATION AND DEMOBILIZATION (DEC 1991)

(a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor's plant and equipment at the contract lump sum price for this item.

(1) Sixty (60%) percent of the lump sum price upon completion of the contractor's mobilization at the work site.

(2) The remaining forty (40%) percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a)(1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of—

- (i) Actual mobilization costs at completion of mobilization;
- (ii) Actual demobilization costs at completion of demobilization; and
- (iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) of this clause is not subject to appeal.

## 20 PLAN OF OPERATION

The work shall be performed in accordance with a plan of operations submitted by the Contractor. The plan shall include the information required to be submitted in the specifications, Section 00700, "Contract Clauses" and Section 00800, "Special Contract Requirements". Work schedules shall be included in the plan, and the Contracting Officer shall be notified at least 48 hours in advance of changes in work schedules. The plan shall provide for the coordination of construction activities indicated in the specifications and shown on the contract drawings.

## 21 52.236-1 PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least twenty (20%) percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

## 22 OBSTRUCTION OF NAVIGABLE WATERWAYS (DEC 1991)

(a) The Contractor shall –

(1) Promptly recover and remove any material, plan, machinery, or appliance which he Contractor loses, dumps, throws overboard, sinks or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such obstruction to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may -

(1) Remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and

(2) Deduct the cost of removal from any monies due or to become due to the Contractor;

(3) Recover the cost of removal under the Contractor's bond.

(c) The Contractor's liability for the removal of the vessel wrecked or sunk without fault or negligence is limited to that provided in sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 et seq)

(End of Clause)

## 23 SIGNAL LIGHTS

The Contractor shall display signal lights and conduct his operations in accordance with the General Regulations of the Department of the Army and of the Coast Guard governing lights and day signals to be displayed by towing vessels with tows on which no signals can be displayed, vessels working on wrecks, dredges, and vessels engaged in laying cables or pipe or in submarine or bank protection operations, lights to be displayed on dredge pipe lines, and day signals to be displayed by vessels of more than 65 feet in length moored or anchored in a fairway or channel, and the passing by other vessels of floating plant working in navigable channels, as approved by the Commandant, U.S. Coast Guard (33 C.F.R. 80.18-80.31a and 33 C.F.R. 95.51-95-70).

## 24 WORK UNDER OTHER CONTRACTS

Other construction projects in the vicinity of this contract may simultaneously be performed during various periods of the contract. The Contractor shall coordinate and cooperate with all other Contractors and their subcontractors, if any, and shall share the available work areas, including haul roads in such a manner as to minimize interference and ensure an orderly completion of all the work. The Contractor shall also coordinate all the activities with the Contracting Officer who will make all final decisions with regards to any disputes over work.

## 26 52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of Clause)

## 27 CONTINUING CONTRACTS (1985 JAN HQ USACE) EFARS 52-232-10001

(a) This is a continuing contract, as authorized by Section 10 of the River and Harbor Act of September 22, 1922 (33 U.S. Code 621). The payment of some portion of the contract price is dependent upon reservations of funds from future appropriations. The responsibilities of the Government are limited by

this clause notwithstanding any contrary provision of the "Payments to Contractor" clause or any other clause of this contract.

(b)(1) The sum of \$5,000.00 has been reserved for this contract and is available for payments to the contractor during the current fiscal year. It is expected that Congress will make appropriations for future fiscal years from which additional funds will be reserved for this contract.

(2) Failure to make payment in excess of the amount currently reserved, or that may be reserved from time to time, shall not entitle the contractor to a price adjustment under the terms of this contract except as specifically provided in paragraphs (d) and (e) below. No such failure shall constitute a breach of this contract, except that this provision shall not bar a breach-of-contract action if an amount finally determined to be due as a termination allowance remains unpaid for one year due solely to a failure to reserve sufficient additional funds therefore.

(c)(1) The Government may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. The contracting officer will promptly notify the contractor of any additional funds reserved for the contract by issuing an administrative change order to the contract.

(2) If earnings will be such that funds reserved for the contract will be exhausted before the end of any fiscal year, the contractor shall give written notice to the contracting officer of the estimated date of exhaustion and the amount of additional funds which will be needed to meet payments due or to become due under the contract during that fiscal year. This notice shall be given not less than 45 nor more than 60 days prior to the estimated date of exhaustion.

(d)(1) No payments will be made after exhaustion of funds except to the extent that additional funds are reserved for the contract. The contractor shall be entitled to simple interest on any payment that the contracting officer determines was actually earned under the terms of the contract and would have been made except for exhaustion of funds. Interest shall be computed from the time such payment would otherwise have been made until actually or constructively made, and shall be at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, for the Renegotiation Board, as in effect on the first day of the delay in such payment.

(2) Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall constitute a breach of this contract and shall not entitle the contractor to any price adjustment under the "Suspension of Work" clause or in any other manner under this contract.

(3) An equitable adjustment in performance time shall be made for any increase in the time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds.

(e) If, upon the expiration of sixty (60) days after the beginning of the fiscal year following an exhaustion of funds, the Government has failed to reserve sufficient additional funds to cover payments otherwise due, the contractor, by written notice delivered to the contracting officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. Such a termination shall be considered a termination for the convenience of the Government.

(f) If at any time it becomes apparent that the funds reserved for any fiscal year are in excess of the funds required to meet all payments due or to become due the contractor because of work performed and to be performed under the contract during the fiscal year, the Government reserves the right, after notice to the contractor, to reduce said reservation by the amount of such excess.

## 28. LOADS ON EXISTING STRUCTURE

No loads will be allowed on the existing structure until tremie concrete has been placed to fill voids under the concrete cap. Once this work has been completed and the tremie concrete has reached its design strength, loads on existing pierhead structure will be limited to construction equipment weighing less than 5,000 pounds. Equipment weighing more than this amount will not be allowed on any portion of the existing timber crib pierhead structure. Stockpiling of materials on the structure will not be allowed.

## 29. LISTED STONE SOURCES

(a) The following listed sources of stone materials and aggregates have been inspected and tested and/or have previously furnished materials that meet the quality requirements stipulated in the specifications. Each source shown, contained at the time of inspection and testing and/or previous use, suitable in-place stone, gravel, or sand from which the specified material quality and type could be or was produced. More detailed information for each of the listed sources is available for inspection by the Contractor in the Coastal/Geotechnical Section, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199. The project materials are indicated in accordance with the Identification Table shown below:

TYPE	MATERIAL	SIZE RANGE
A	Granular Fill Material	½ inch – 2-1/2 inches
B	Select Fill Material	No. 4 – 1 inch
C	Fine Aggregate for Concrete	No. 100 – 3/8 in.
D	Course Aggregate for Concrete	No. 8 – 1-1/2 in.

### CATEGORY I

**Boyas Excavating Co.**, 11311 Rockside Road, Valley View, OH 44125; (216) 642-8800; quarry at Rockside, OH; rock formation: Euclid Sandstone; listed for Type A, B, C, D, E and F stone production. After sizing the riprap, a 45-day curing period of this sandstone is required before any armor shipment. Specific gravity: 2.42. Inspected by the Buffalo District in October 1997 and tested for stone use by ORD in August 1993.

**Erie Blacktop Inc.**, PO Box 2351 Parcel Post Annex, Sandusky, OH 44870; (419) 625-7374; quarry at Castalia, OH; rock formation: Columbus Limestone; listed for Type A, B, C, D, E, and F, stone

production. Specific gravity: 2.58. Inspected by the Buffalo District in May 1993 and tested for stone use by ORD in August 1993.

**Whiterock Quarry**, Clay Center, OH 43408; (419) 855-8388; White Rock quarry at Clay Center, OH; rock formation: - Niagaran "reef-type" dolomite; listed for Type A, B, C, D, E and F stone production. Unsuitable geology is Greenfield dolomite and fossilized algae stone. Specific gravity: 2.63. Inspected by the Buffalo District in May 1999 and tested for stone use by ORD in 1990.

**Hanson Stone Co.**, P.O. Box 1928, Toledo, OH 43603; (419) 483-5185; quarry at Flat Rock, OH: rock formation, Delaware and Detroit River limestone; lift 3 listed for Type A, B, C, and D stone production. Specific gravity: 2.41. Inspected by the Buffalo District in May 2000 and tested for stone use by ORD in August 1990.

**Standard LaFarge Quarry.**, P.O. Box 391, Kelly's Island, OH 43438 (419) 746-2396; rock formations, similar to the Amherstberg member of the Detroit River group; listed for Type A, B, C, and D stone production. Specific gravity: 2.41 Inspected by the Buffalo District in May 1991 and tested for stone use by ORD in July 1991.

**Mac Ritchie Materials Inc.**, PO Box 90, W. Millgrove, OH 43467; (419) 288-2790; quarry at W. Millgrove, OH; rock formation: Niagara "reef-type" Dolomite; listed for Type A, B, C, D, E and F stone production. Specific gravity: 2.55. Inspected by the Buffalo District in May 2000 and tested for stone use by ORD in August 1993.

**Martin Marietta Chemical Co.**, Refractories Division, PO Box 187, 755 Lime Road, Woodville, OH 43469; (419) 849-3011; quarry at Woodville, Ohio; rock formation: Niagaran "reef-type" Dolomite; listed for Type C, D, E and F stone production. Specific gravity: 2.67. Inspected by the Buffalo District in May 1993 and tested for stone use by ORD in August 1993..

**Hanson Aggregates Inc.**, P. O. Box 527, Sandusky, OH 44870; (419) 483-4390; quarry at Parkertown, OH; rock formation, Columbus and Delaware Limestone; Lift 3 listed for Type A, B, C, D, E, and F stone production. Specific gravity: 2.68. Inspected by the Buffalo District in May 1991 and tested for stone use by ORD in July 1991.

**Standard LaFarge Co.**, Marblehead Stone Division, 522 Limestone Drive, Marblehead, OH 44131; (419) 798-4486; quarry at Marblehead, OH; rock formations, Columbus Limestone, Lucas and Amherstberg dolomites; listed for Type A, B, C, D, E, and F stone production. Specific gravity: 2.58. Inspected by the Buffalo District in May 1991 and tested for stone use by ORD in July 1991.

**Stoneco Inc.**, Quarry at Lime City, 8812 Freemont Pike, Perrysburg, OH 43551; rock formation: Niagaran "reef-type" dolomite; listed for Type A, B, C, D, E and F stone production. Specific gravity: 2.64. Inspected by the Buffalo District in May 1993, and tested for stone use by ORD in August 1993.

**Sylvester Material Co.**, 7901 Sylvania Avenue, Sylvania, OH 43560; (419) 885-4658; quarry at Genoa, OH; rock formation: Niagaran "reef-type" dolomite; listed for Type A, B, C, D, E and F stone production. Specific gravity: 2.75. Inspected and tested by the Buffalo District in August 1998.

## CATEGORY II

None

(b) The above does not represent a comprehensive listing of all potential stone sources; others may exist. The sites listed as potential sources of material have not been investigated with respect to the availability of specific quantities and sizes of the material required for the project. Listing of the sources hereinbefore only indicates that there could be some material in the source, if selected zones and appropriate quarrying techniques are used, that meet all the requirements stipulated in the specifications. The listing of sources and suppliers does not guarantee that the quality or sufficient quantities of materials necessary for this contract are available at any of the sources listed nor does it guarantee that economical production can be obtained from that source.

(c) Nothing herein is to be construed as implying that sources listed herein are actually interested in or capable of producing or offering stone and aggregate in the size, gradation, weights or quantities required or that transportation from the source to the project is available. The Contractor shall verify each source selected for its capability to produce the quantity required of the quality, sizes, gradation, or weights stipulated in the specifications.

(d) The right is reserved to reject materials from certain localized areas, zones, strata, or channels of any source, when such materials are determined by the Contracting Officer to be unsuitable based upon quality requirements herein. Rejection of any and/or all material by the Contracting Officer shall not be grounds for a time extension under the Contract Clause of this contract entitled "Default (Fixed-Price Construction)" Materials produced from a listed or other source(s) shall meet all requirements stipulated in the specifications.

(e) When stone and/or aggregate materials are to be obtained from a Category II or unlisted source(s), a maximum of ninety (90) calendar days will be required by the Government to complete evaluation of the material to be used on the work if additional testing is required. The Government will also at this time be given, in writing, the specified areas, lifts and geologic units in the quarry or pit to be utilized.

(f) Stone materials may be furnished from any of the above listed sources; or subject to the conditions hereinafter stated, may be furnished from other sources.

(g) Within 10 days after award of a contract, the Contractor shall designate, in writing, a source or one combination of sources from which he proposes to furnish each type of stone material. Once a non-listed source or combination of sources is selected, the Contractor shall submit to the Government, in writing, the name and location of the specific source or combination of sources to be used. Additional information including: (1) area and lifts of the quarry and/or pit to be worked, (2) the specific geological stratum or strata to be utilized, (3) available laboratory testing records, and (4) previous use records shall be provided by the Contractor for review. Upon receipt of this information, the Contracting Officer's Representative shall inspect the selected non-listed source to verify that it may contain some material that meets all requirements of the specifications and warrants sampling and testing. Samplings, shipping and testing of materials from non-listed sources shall be as follows:

(1) Sampling and Shipping. The Contractor shall provide for a suitable sample(s) of the materials proposed to be furnished for testing and approval. Stone sample(s) shall be furnished and delivered to the laboratory within ten (10) calendar days after the date of receipt by the Contractor of the written Notice to Proceed. The ninety (90) days time shall begin at the time the samples are actually received at the laboratory. Samples for acceptance testing shall be provided as required by the specifications. Samples shall be representative of the size and quality of materials to be used on the project. Material actually furnished under the contract shall be of quality at least as good, in the judgement of the Contracting Officer, as the sample(s) furnished. The Contracting Officer's Representative shall be present during sampling and approve the selection of all samples before shipment. The Contracting Officer's Representative may personally select all samples if he so elects. Sampling and shipping of sample(s) shall be at the Contractor's expense. Sample(s) shall be selected from the proposed sources of supply and shall be shipped and/or delivered to the Rock Laboratory Director, U.S. Army Engineer Research and Development Center, Waterways Experiment Station Site, ATTN: CEERD-GM-C, 3909 Halls Ferry Road, Vicksburg, MS 39180-6199, Ph: (601) 634-3278.

(2) Testing. Necessary testing required to evaluate one proposed source or combination of sources under this paragraph will be made at the expense of the Government. Testing will be in accordance with the specifications.

(3) Completion Time. A maximum of ninety (90) calendar days will be required by the Government to complete evaluation of stone materials. The stated contract completion time will not be extended for sampling and testing from non-listed sources.

(h) If the source(s) so designated by the Contractor is not allowed for use by the Contracting Officer, the Contractor may not submit for use other sources, but shall furnish the materials from a source(s) listed hereinbefore subject to concurrence of the Contracting Officer and compliance with contract specifications requirements at no additional cost to the Government.