

SOLICITATION, OFFER, AND AWARD <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO. DACW37-00-B-0015	2. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 30-Oct-2000	PAGE OF PAGES 1 OF 109
	IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.			

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

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO.	6. PROJECT NO. Lock 8, Stage 2
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7. ISSUED BY CONTRACTING DIVISION USACE - ST PAUL 190 5TH STREET ST PAUL, MN 55101-1638	CODE DACW37	8. ADDRESS OFFER TO <i>(If Other Than Item 7)</i> See Item 7	CODE
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9. FOR INFORMATION CALL:	A. NAME Bruce Stephenson	B. TELEPHONE NO. <i>(Include area code)</i> (NO COLLECT CALLS) 651-290-5418
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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 *(Title, identifying no., date)*:
DACW37-00-B-0015

LOCK AND DAM 8 STAGE 2, MAJOR MAINTENANCE, GENOA, WISCONSIN. Project work consists of, but is not limited to, furnishing all plant, labor, material and equipment necessary to complete the rehabilitation of Lock and Dam 8. Work involves construction of a new central control building, replacing lock electrical systems and upgrading or replacing other numerous small features of the lock facility. Site work includes grading roadways and parking areas, curb and gutter, sidewalks, landscaping storm sewers, irrigation system, and retaining walls. Lock features include concrete repairs, handrail replacement, compressed air bubbler system, flagpoles, and auxiliary water system.

THIS PROCUREMENT IS ISSUED UNRESTRICTED UNDER THE SMALL BUSINESS COMPETITIVE DEMONSTRATION PROGRAM (PUBLIC LAW 100-656) NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODE IS 234990 FOR A Small Business Size Standard AT \$27.5 million. The estimated magnitude of construction in terms of physical characteristics and estimated price is between \$5,000,000 and \$10,000,000.

11. The Contractor shall begin performance within 10 calendar days and complete it within 1095 calendar days after receiving award, notice to proceed. This performance period is mandatory, negotiable. (See Section 800 _____ .)

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

A. Sealed offers in original and 0 copies to perform the work required are due at the place specified in Item 8 by 14:00:00 (hour) local time 11/30/00 (date). If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.

B. An offer guarantee is, is not required.

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

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

SOLICITATION, OFFER, AND AWARD (Continued)

(Construction, Alteration, or Repair)

OFFER (Must be fully completed by offeror)

14. NAME AND ADDRESS OF OFFEROR *(Include ZIP Code)*

15. TELEPHONE NO. *(Include area code)*

16. REMITTANCE ADDRESS *(Include only if different than Item 14)*

See Item 14

CODE

FACILITY CODE

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

AMOUNTS

SEE SCHEDULE OF PRICES

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 *(Type or print)*

20B. SIGNATURE

20C. OFFER DATE

AWARD (To be completed by Government)

21. ITEMS ACCEPTED:

SEE SCHEDULE

22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

24. SUBMIT INVOICES TO ADDRESS SHOWN IN *(4 copies unless otherwise specified)*

ITEM

25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO

10 U.S.C. 2304(c)

41 U.S.C. 253(c)

26. ADMINISTERED BY

CODE

27. PAYMENT WILL BE MADE BY

CODE

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

28. NEGOTIATED AGREEMENT *(Contractor is required to sign this document and return _____ copies to issuing office.)* Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications or incorporated by reference in or attached to this contract.

29. AWARD *(Contractor is not required to sign this document.)* Your offer on this solicitation, is hereby accepted as to the items listed. This award commutes the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN *(Type or print)*

31A. NAME OF CONTRACTING OFFICER *(Type or print)*

30B. SIGNATURE

30C. DATE

31B. UNITED STATES OF AMERICA
BY

31C. AWARD DATE

SECTION 00010 Solicitation Contract Form

Basic Items

DEMOLITION AND REMOVALS

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Tank Removal/Relocation FFP	1.00	Lump Sum		
0002	Asbestos Removal FFP	1.00	Lump Sum		
0003	Lead Abatement/Disposal FFP	1.00	Lump Sum		
0004	General Demolition and Removal FFP	1.00	Lump Sum		
0005	Demolition of Existing Central Control Station FFP	1.00	Lump Sum		
0006	Demolition of Storage and Maintenance Buildings FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0007	Demolition of Observation Platform and Restroom FFP	1.00	Lump Sum		

NEW CENTAL CONTROL STATION

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0008	Building General FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0009	Steel H Pile Furnished FFP				

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0009AA	First 2000 LF FFP	2,000.00	Linear Foot		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0009AB	Over 2000 LF FFP	1,110.00	Linear Foot		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0010	Steel H Pile Driving FFP				

ITEM NO 0010AA	SUPPLIES/SERVICES First 2000 LF FFP	QUANTITY 2,000.00	UNIT Linear Foot	UNIT PRICE	AMOUNT
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ITEM NO 0010AB	SUPPLIES/SERVICES Over 2000 LF FFP	QUANTITY 1,110.00	UNIT Linear Foot	UNIT PRICE	AMOUNT
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ITEM NO 0011	SUPPLIES/SERVICES PDA Testing FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO 0012	SUPPLIES/SERVICES Building Mechanical FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO 0013	SUPPLIES/SERVICES Building Plumbing FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO 0014	SUPPLIES/SERVICES Building Electrical FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0015	Building Ligthing FFP	1.00	Lump Sum		
0016	Building Cast in Place Concrete FFP	1.00	Lump Sum		
0017	Building Precast Concrete FFP	1.00	Lump Sum		
0018	Building Masonry FFP	1.00	Lump Sum		
0019	Building Structural Steel and Steel Deck FFP	1.00	Lump Sum		
0020	Common Excavation FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0021	Select Granular Fill FFP	1.00	Lump Sum		
0022	Riprap FFP	70.00	Dry Ton		
0023	Storm Sewer (18" RCP) FFP	1,460.00	Linear Foot		
0024	End Sections, Manholes and Catch Basins FFP	1.00	Lump Sum		
0025	Aggregate Base FFP	1,320.00	Cubic Yard		
0026	Bituminous Base Course FFP	4,730.00	Square Yard		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0027	Bituminous Surface Course and Tack Coat FFP	4,730.00	Square Yard		
0028	Pavement Marking FFP	1.00	Lump Sum		
0029	Tapered Concrete Paving (8-12") FFP	980.00	Square Yard		
0030	Concrete Sidewalks (4") FFP	1,040.00	Square Yard		
0031	Curb and Gutter FFP	2,900.00	Linear Foot		
0032	Reinforced Grass Pavers FFP	950.00	Square Yard		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0033	Undeground Sprinkler System FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0034	Chain Link Fence FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0035	Segmental Concrete Block Retaining Wall No. 1 FFP	700.00	Square Foot		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0036	Segmental Concrete Block Retaining Wall No.2 FFP	240.00	Square Foot		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0037	Site Furnishings FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0038	Sod FFP	7,000.00	Square Yard		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0039	Landscaping FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0040	Guide Wall Post Tensioned Bars FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0041	Transformer and Dumpster Pads FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0042	Fuel Storage Pad FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0043	Control Stand Curb Removal and Closure FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0044	Tainter Valve Recess Modifications FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0045	Downstream Control Stand FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0046	Concrete Repair, Horizontal FFP				

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0046AA	First 15,000 SF FFP	15,000.00	Square Foot		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0046AB	Over 15,000 SF FFP	4,000.00	Square Foot		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0047	Concrete Repair for Closure of Manholes FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0048	Concrete Repair, Light Standard Support FFP				

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0048AA	First 100 CF FFP	100.00	Cubic Feet		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0048AB	Over 100 CF FFP	100.00	Cubic Feet		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0049	Concrete Repair, Vertical (FRAPMC) FFP				

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0049AA	First 400 CF FFP	400.00	Cubic Feet		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0049AB	Over400 CF FFP	500.00	Cubic Feet		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0050	Polymer Modified Mortar FFP				

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0050AA	First 1000 SF FFP	1,000.00	Square Foot		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0050AB	Over 1000 SF FFP	700.00	Square Foot		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0051	Joint Sealant, Vertical FFP				

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0051AA	First 200 LF FFP	200.00	Cubic Feet		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0051AB	Over 200 LF FFP	125.00	Cubic Feet		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0052	Joint Sealant, Horizontal FFP				

ITEM NO 0052AA	SUPPLIES/SERVICES First 50 LF FFP	QUANTITY 50.00	UNIT Linear Foot	UNIT PRICE	AMOUNT
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ITEM NO 0052AB	SUPPLIES/SERVICES Over 50 LF FFP	QUANTITY 30.00	UNIT Linear Foot	UNIT PRICE	AMOUNT
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ITEM NO 0053	SUPPLIES/SERVICES Crack Sealing, Horizontal FFP	QUANTITY	UNIT	UNIT PRICE	AMOUNT
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ITEM NO 0053AA	SUPPLIES/SERVICES First 60 LF FFP	QUANTITY 60.00	UNIT Linear Foot	UNIT PRICE	AMOUNT
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ITEM NO 0053AB	SUPPLIES/SERVICES Over 60 LF FFP	QUANTITY 800.00	UNIT Linear Foot	UNIT PRICE	AMOUNT
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ITEM NO 0054	SUPPLIES/SERVICES Tow Haulage Unit Modifications/Shelter FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0055	Exterior Sign Supports/Reinstallation FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0056	Lock Wall Manhole Grating FFP	296.00	Square Foot		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0057	Steel Grating FFP	1,020.00	Square Foot		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0058	Lock Wall Armor FFP	2,200.00	Pound		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0059	Trench Covers FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0060	Lock Handrails FFP	5,300.00	Linear Foot		

ITEM NO 0061	SUPPLIES/SERVICES Central Control Station Handrails FFP	QUANTITY 260.00	UNIT Linear Foot	UNIT PRICE	AMOUNT
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ITEM NO 0062	SUPPLIES/SERVICES Spare Handrail Componets FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO 0063	SUPPLIES/SERVICES Dam Pier House Door Replacement FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO 0064	SUPPLIES/SERVICES Flag Poles FFP	QUANTITY 2.00	UNIT Each	UNIT PRICE	AMOUNT
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ITEM NO 0065	SUPPLIES/SERVICES Water Supply System FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO 0066	SUPPLIES/SERVICES Auxiliary Water System FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO 0067	SUPPLIES/SERVICES Electric Overhead Monorail Hoist and Beam FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO 0068	SUPPLIES/SERVICES Sanitary Sewer System FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO 0069	SUPPLIES/SERVICES Fuel Oil System FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO 0070	SUPPLIES/SERVICES Compressed Air Bubbler System FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO 0071	SUPPLIES/SERVICES Electrial Removals FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO 0072	SUPPLIES/SERVICES Temporary Wiring FFP	QUANTITY 1.00	UNIT Lump Sum	UNIT PRICE	AMOUNT
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ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0073	Power Distribution Equipment FFP	1.00	Lump Sum		
0074	Lock Electrical FFP	1.00	Lump Sum		
0075	Lock and Site Lighting FFP	1.00	Lump Sum		
0076	Fire Detection System FFP	1.00	Lump Sum		
0077	Communication System FFP	1.00	Lump Sum		
0078	Modifications to Existing Underpass FFP	1.00	Lump Sum		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0079	New Restroom Building FFP	1.00	Lump Sum		

_____.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0080	Bonds FFP	1.00	Lump Sum		

_____.

ESTIMATED AMOUNT – BASIC ITEMS (CLINS 0001 THROUGH 0080)

\$_____.

OPTION ITEMS

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0081	Epoxy Injected Crack Repair FFP	110.00	Linear Foot		

_____.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0082	Railroad Easement Work FFP	1.00	Lump Sum		
				_____.	_____.

ESTIMATED AMOUNT – OPTION ITEMS
(CLINS 0081 THROUGH 0082)

\$ _____.

TOTAL ESTIMATED AMOUNT FOR ALL ITEMS (BASIC AND
OPTION – CLINS 0001 THROUGH 0082)

\$ _____.

BID SCHEDULE NOTES

1. FACSIMILE OF BIDS/PROPOSALS AND FACSIMILE OF MODIFICATIONS THERETO, WILL NOT BE ACCEPTED.

2. All Quantities are estimated except where unit is given as "EA" (EACH) or "LS" (LUMP SUM).

3. NOTICE TO LARGE BUSINESS: The U.S. Army Corps of Engineers, St. Paul District, is committed to participation of Small Business, Small Disadvantaged Business and Women-Owned Small Business in the performance of work under this solicitation and resultant contract.

Your attention is directed to the solicitation clauses 52.219-0008 entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns", 52.219-0009 I entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," and 52.219-7003 entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DOD Contracts)".

If you are a large business and the apparent low bidder with a bid exceeding \$1,000,000, submission of a Subcontracting Plan in accordance with above clauses will be required. The Contracting Officer will review the plan using the following goals to assure that it represents your best efforts to maximize subcontracting opportunities. Award will not be made until the Subcontracting Plan is approved by the Contracting Officer.

The following subcontracting goals are informational only and not legally binding but are considered reasonable and achievable during the resultant contract from this solicitation. The goals expressed in percent of total planned subcontracting dollars are:

Small Business	61.4%
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Small Disadvantaged Business	9.1%
Women-Owned Small Business	5.0%
HUBZone Small Business	Maximum Percent (%)
	Practicable
Veteran-Owned small Business	3.0%
Subcontract Reporting (SF 294 & SF 295)	100.0%

4. The apparent low bidder will be requested to provide the following information as soon as possible after bid opening:

- a. A Financial Statement, to include a balance sheet and income statement, and
- b. A Bank Certification of Financial Capability (line of credit).

This information will be treated as confidential. The financial statements should be not over 60 days old. If over 60 days old, a certification should be attached stating that the financial condition of the firm is substantially the same or, if not the same, the changes that have taken place.

5. All extensions of the unit prices shown will be subject to verification by the Government. In case of a discrepancy between the unit price and the extension, the unit price will govern.

6. The original bid/proposal and any modifications must be complete as to all the items on the schedule. Award will be made to that bidder whose bid is most advantageous to the Government, based on price and the price related factors included in the solicitation.

7. Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing in accordance with Section 00100, Contract Clause "Explanation To Prospective Bidders", not later than 10 days prior to bid opening. Questions can be faxed to (651)290-5706, to the attention of Bruce Stephenson.

8. Bidders attention is called to Section 00100, Clause 252.204-7004 "Required Central Contractor Registration".

9. Funding for this contract is contingent upon the conditions stated in Section 00800, Clause No. 52.232-5001, Continuing Contracts.

10. The bidders attention is directed to Section 00700 Clause 52.217-4000, Section 830 Attachment E, Railroad Agreement and Option Item – CLIN 0082. Should the Government choose to exercise Option Item - CLIN 0082 the Contractor's obligation under the contract shall include but not be limited to those stated in Section 00700 Clause 52.217-4000 and the requirements and obligations that the Government is required to impose on its Contractors by the Railroad Agreement.

11. Davis-Bacon wage determinations WI000003 (Mod 4) (building) and WI000019 (Mod 3) (heavy) are included in and made a part of this solicitation /contract. For purposes of the Corps enforcement of the Davis-Bacon minimum wage requirement of this contract, the rates contained in WI000003 (Mod 4) will be applied within the building lines of the Central control Station and the restroom buildings and the rates of WI000019 (Mod 3) will be applied to the remainder of the contract work. The Corps does not warrant that the allocation of labor rates described above comports with the practice of any particular trade or industry; further, the Corps does not warrant that the builder/contractor can obtain qualified labor at the rates set forth in the Davis-Bacon wage determinations. Each bidder is responsible for ascertaining the actual cost of obtaining labor for the subject work and shall prepare its bid accordingly.

12. The addresses, phone numbers, and internet addresses (if available) for references cited in these specifications are listed in the Corps of Engineer Guide Specification (CEGS) 01090 SOURCES FOR REFERENCE PUBLICATIONS. CEGS 01090 is available on the TECHNIFO page of the Corps of Engineers Huntsville District internet site at: <http://w2.hnd.usace.army.mil/>.

SECTION 00100 Bidding Schedule/Instructions to Bidders

CLAUSES INCORPORATED BY REFERENCE:

52.214-5000 Apparent Clerical Mistakes

MAY 1999

CLAUSES INCORPORATED BY FULL TEXT

52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUN 99)

(a) Contractor identification is essential for complying with statutory contract reporting requirements. Therefore, the offeror is requested to enter, in the block with its name and address on the Standard Form 33 or similar document, the annotation "DUNS" followed by the DUNS number which identifies the offeror's name and address exactly as stated in the offer.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:

- (1) Company name.
- (2) Company address.
- (3) Company telephone number.
- (4) Line of business.
- (5) Chief executive officer/key manager.
- (6) Date the company was started.
- (7) Number of people employed by the company.
- (8) Company affiliation.

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at <http://www.customerservice@dnb.com/>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@dnb.com.

(End of provision)

52.209-4001 BIDDER'S QUALIFICATIONS (APR 1984) FAR 9.105-1

Before a bid is considered for award, the bidder 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.

52.214-1 SOLICITATION DEFINITIONS--SEALED BIDDING (JUL 1987)

"Government" means United States Government.

"Offer" means "bid" in sealed bidding.

"Solicitation" means an invitation for bids in sealed bidding.

(End of provision)

52.214-3 AMENDMENTS TO INVITATIONS FOR BIDS (DEC 1989)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

52.214-4 FALSE STATEMENTS IN BIDS (APR 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)

52.214-5 SUBMISSION OF BIDS (MAR 1997)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) (1) addressed to the office specified in the solicitation, and (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(d) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

52.214-6 EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any

information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)

52.214-7 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (NOV 1999)

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and--

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

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

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

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

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

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

52.214-18 PREPARATION OF BIDS--CONSTRUCTION (APR 1984)

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

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including--

(1) Lump sum bidding;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (1) through (3) above.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.

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

52.214-19 CONTRACT AWARD--SEALED BIDDING--CONSTRUCTION (AUG 1996)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

52.214-4001 INQUIRIES - BID INFORMATION

(a) Inquiries:

Any questions regarding this solicitation should be directed to Bruce Stephenson , Contract Specialist, at telephone number (651) 290-5418 (collect calls not accepted). It is requested that all technical questions on the plans and specifications be submitted to the Contract Specialist by facsimile transmission to (651) 290-5706.

The Planholder's List and bid results can be found on the St. Paul District web site at <http://www.mvp.usace.army.mil> (click on "Contracts", then "Bid Solicitations").

(b) Bid Depository/Bid Opening Information:

Bids must be deposited prior to the date and time set for opening of bids. The bid depository is located in the Contracting Division, 6th Floor, of the St. Paul District, Corps of Engineers Centre, 190 Fifth Street East, St. Paul, Minnesota 55101-1638. A public bid opening will be held at the same location.

52.214-4002 ALL OR NONE QUALIFICATIONS (APR 1984) FAR 14.404-5

A bidder/offeror must quote on all items in this solicitation to be eligible for award. The Government will award on a "All or None" basis. Evaluation of bids/offers will be based, among other factors, upon the total price quoted for all items.

52.219-4004 SMALL BUSINESS SIZE STANDARD FOR CONSTRUCTION AND SPECIAL TRADES

(FAR 19.101 & 19.102)

Annual receipts of a concern which has been in business for 3 or more complete fiscal years means the annual average gross revenue of the concern taken for the last 3 fiscal years. Annual receipts of a concern that has been in business for less than 3 complete fiscal years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52.

SIC	DESCRIPTION	SIZE STANDARDS IN MILLIONS OF DOLLARS <u>Final Rule</u>
DIVISION C - CONSTRUCTION		
MAJOR GROUP 15 - BUILDING CONSTRUCTION - GENERAL CONTRACTORS AND OPERATIVE BUILDERS		
1521	General Contractors - Single-Family House	\$17
1522	General Contractors - Residential Buildings, Other Than Single-Family	17
1531	Operative Builders	17
1541	General Contractors - Industrial Buildings and Warehouses	17
1542	General Contractors - Nonresidential Buildings and Warehouses	17
MAJOR GROUP 16 - CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION - GENERAL CONTRACTORS		
1611	Highway and Street Construction, Except Elevated Highways	\$17
1622	Bridge, Tunnel, and Elevated Highway Construction	17
1623	Water, Sewer, Pipe Line, Communication and Power Line Construction	17
1629	Heavy Construction, Except Dredging, N.E.C. (Not Elsewhere Covered)	17
1629	Dredging and Surface Cleanup Activities	(1)\$13.5
MAJOR GROUP 17 - CONSTRUCTION - SPECIAL TRADE CONTRACTORS		
1711	Plumbing, heating (except electric), and air-conditioning	\$7
1721	Painting, paperhanging, and decorating	7
1731	Electrical work	7
1741	Masonry, stone setting, and other stonework	7
1742	Plastering, drywall, acoustical and insulation work	7
1743	Terrazzo, tile, marble, and mosaic work	7
1751	Carpentering	7
1752	Floor laying and other floorwork, N.E.C.	7
1761	Roofing and sheet metal work	7
1771	Concrete work	7
1781	Water well drilling	7
1791	Structural steel erection	7
1793	Glass and glazing work	7
1794	Excavating and foundation work	7
1795	Wrecking and demolition work	7
1796	Installation or erection of building equipment, N.E.C.	7
1799	Special trade contractors, N.E.C.	7
x1	Base House Maintenance	(2) \$7

(1) To be considered small, a firm must perform the dredging of at least 40 percent of the yardage with its own dredging equipment or equipment owned by another small dredging concern.

(2) If one of the activities in base maintenance, as defined in SIC - 7369, can be identified with a separate industry, and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard shall be that for the particular industry, and not the base maintenance size standard.

"Base maintenance" constitutes three or more separate activities. These activities may be either service or special trade construction related activities. As services, these activities must each be in a separate industry. These activities may include but are not limited to such separate maintenance activities as Janitorial and Custodial Service, Protective Guard Service, Commissary Service, Fire Prevention Service, the Safety Engineering Service, Messenger Service, and Grounds Maintenance and Landscaping Service. If the contract involves the use of special trade contractors (plumbing, painting, plastering, carpeting, etc.) all such specialized special trade construction activities will be considered a single activity, which is Base Housing Maintenance. This is only one activity of base maintenance and two additional activities must be present for the contract to be considered base maintenance. The size standard for Base Housing Maintenance is \$7 million, the same size standard as for Special Trade Contractors.

52.225-10 NOTICE OF BUY AMERICAN ACT/BALANCE OF PAYMENTS PROGRAM REQUIREMENT--CONSTRUCTION MATERIALS (FEB 2000)

(a) Definitions. Construction material, domestic construction material, and foreign construction material, as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act--Balance of Payments Program--Construction Materials" (Federal Acquisition Regulation (FAR) clause 52.225-9).

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

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

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

(d) Alternate offers.

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

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

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

equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested--

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

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

Department of the Army
Corp of Engineers, St. Paul District
Attn: Contracting Division
190 Fifth street East
St. Paul, Minnesota 55101-1638

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

(End of provision)

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

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

(b) Site visits and to view the Government Furnished Property may be arranged during normal duty hours by contacting:

Name: Mr. James Green
Address: Lock and Dam 8, Box B, Genoa, WI 54632-0265
Telephone: 608-689-2625

52.236-4002 WORK PERFORMED BY THE CONTRACTOR

The successful bidder must furnish the Contracting Officer within 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.

52.236-4005 UNAVAILABILITY OF UTILITY SERVICES

The responsibility shall be upon the Contractor to provide and maintain at its expense, adequate utilities for its 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.

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

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://.arnet.gov>

52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

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

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

52.217-5 EVALUATION OF OPTIONS (JUL 1990)

(a) Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(b) The Government may reject an offer as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option quantities. An offer is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

SECTION 00600 Representations & Certifications

CLAUSES INCORPORATED BY REFERENCE:

252.225-7017 Prohibition on Award to Companies Owned by the People's Republic of China FEB 2000

CLAUSES INCORPORATED BY FULL TEXT

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)

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

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this Certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989,--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

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)

52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (MAR 1996)

(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.

(End of provision)

52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (OCT 2000) ALTERNATE I (OCT 2000) & ALTERNATE II (OCT 2000)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 234990.

(2) The small business size standard is \$27.5 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.

(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 of ownership, 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.

(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) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.*

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(3) 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.

(End of Provision)

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.

(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.

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)

52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

(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) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; 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.

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)

252.225-7003 INFORMATION FOR DUTY-FREE ENTRY EVALUATION (MAR 1998)

(a) Does the offeror propose to furnish—

(1) A domestic end product with nonqualifying country components for which the offeror requests duty-free entry;
or

(2) A foreign end product consisting of end items, components, or material of foreign origin other than those for which duty-free entry is to be accorded pursuant to the Duty-Free Entry--Qualifying Country Supplies (End Products and Components) clause or, if applicable, the Duty-Free Entry--Eligible End Products clause of this solicitation?

Yes () No ()

(b) If the answer in paragraph (a) is yes, answer the following questions:

(1) Are such foreign supplies now in the United States?

Yes () No ()

(2) Has the duty on such foreign supplies been paid?

Yes () No ()

(3) If the answer to paragraph (b)(2) is no, what amount is included in the offer to cover such duty? \$ _____

(c) If the duty has not been paid, the Government may elect to make award on a duty-free basis. If so, the offered price will be reduced in the contract award by the amount specified in paragraph (b)(3). The Offeror agrees to identify, at the request of the Contracting Officer, the foreign supplies which are subject to duty-free entry.

252.247-7022 REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term supplies is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) Representation. The Offeror represents that it:

____ (1) Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

____ (2) Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

(End of provision)

SECTION 00700 Contract Clauses

CLAUSES INCORPORATED BY REFERENCE:

52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	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 Or Fee Adjustment For Illegal Or Improper Activity	JAN 1997
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	JUN 1997
52.204-4	Printing/Copying Double-Sided on Recycled Paper	AUG 2000
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	JUL 1995
52.222-3	Convict Labor	AUG 1996
52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation	SEP 2000
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
52.222-15	Certification 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	APR 1998
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
52.223-5	Pollution Prevention and Right-to-Know Information	APR 1998
52.223-6	Drug Free Workplace	JAN 1997
52.227-1	Authorization and Consent	JUL 1995
52.227-2	Notice And Assistance Regarding Patent And Copyright Infringement	AUG 1996
52.227-4	Patent Indemnity-Construction Contracts	APR 1984
52.228-11	Pledges Of Assets	FEB 1992
52.228-14	Irrevocable Letter of Credit	DEC 1999
52.229-3	Federal, State And Local Taxes	JAN 1991
52.229-5	Taxes--Contracts Performed In U S Possessions Or Puerto Rico	APR 1984
52.232-17	Interest	JUN 1996
52.233-3	Protest After Award	AUG 1996
52.242-13	Bankruptcy	JUL 1995
52.247-34	F.O.B. Destination	NOV 1991
52.253-1	Computer Generated Forms	JAN 1991
252.203-7001	Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies	MAR 1999
252.204-7003	Control Of Government Personnel Work Product	APR 1992
252.205-7000	Provisions Of Information To Cooperative Agreement Holders	DEC 1991

252.209-7000	Acquisition From Subcontractors Subject To On-Site Inspection Under The Intermediate Range Nuclear Forces (INF) Treaty	NOV 1995
252.209-7003	Compliance With Veterans' Employment Reporting Requirements	MAR 1998
252.209-7004	Subcontracting With Firms That Are Owned or Controlled By The Government of a Terrorist Country	MAR 1998
252.244-7000	Subcontracts for Commercial Items and Commercial Components (DoD Contracts)	MAR 2000
252.245-7000	Government-Furnished Mapping, Charting, and Geodesy Property	DEC 1991
252.247-7023	Transportation of Supplies by Sea	MAR 2000
252.247-7024	Notification Of Transportation Of Supplies By Sea	MAR 2000

CLAUSES INCORPORATED BY FULL TEXT

52.202-1 DEFINITIONS (OCT 1995) --ALTERNATE I (APR 1984)

(a) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

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

(c) "Component" means any item supplied to the Federal Government as part of an end item or of another component.

(d) "Nondevelopmental item" means--

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

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

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

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

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

52.202-4001 DEFINITIONS (MAY 1995) EFARS Part 2.101

"Chief of Contracting Office" means the Chief of the Contracting Division at a District, or the Director of Contracting at a Division, Center, Laboratory, or other support activity.

"Command" means each USACE Division, each USACE District, The U.S. Army Engineering and Support Center (HNC), Transatlantic Programs Center (TAC), Transatlantic Programs Center (Europe) (TAE), Topographic Engineer Center (TEC), Cold Regions Research and Engineering Laboratory (CRREL), Construction Engineering Research Laboratory (CERL), Humphreys Engineering Center Support Activity (HECSA), and Waterways experiment Station (WES).

"Commander" means the commanding officer of each USACE district and each USACE division, and the director or commander of HNC, TAC, TAE, ETL, CRREL, CERL, HECSA and WES.

"Head of Contracting Activity (HCA)" for USACE means the Chief of Engineers.

Centers. For determining contracting authority levels for this regulation, Centers (HNC, and TAC) will equate to a Division. As a subordinate unit to TAC, TAE's contracting authority will therefore equate to that of a district.

Level higher than the contracting officer. When a District or TAE chief of contracting is the contracting officer, a "level higher than the contracting officer" means the Division or Center Director of Contracting. When an operating Division, Center or Laboratory Director/Chief of Contracting is the contracting officer a "level higher than the contracting officer" means the PARC.

Local Cooperation Agreements (LCAs). See Project Cooperation Agreements.

Project Cooperation Agreements. Formerly referred to as Local Cooperation Agreements, these are agreements under 31 U.S.C. 6305 and 42 U.S.C. 1962d-5b. They are not contracts as defined by the FAR.

"USACE and HQUSACE" means the United States Army Corps of Engineers and its headquarters, respectively.

52.211-18 VARIATION IN ESTIMATED QUANTITY (APR 1984)

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

52.214-26 AUDIT AND RECORDS--SEALED BIDDING. (OCT 1997)

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

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

(1) The proposal for the modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the modification; or

(4) Performance of the modification.

(c) Comptroller General. In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause.

(d) Availability. The Contractor shall make available at its office at all reasonable times the materials described in reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data.

52.214-27 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING. (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR 15.403-4(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.403-1(b) applies.

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because

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

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

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

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

(1) the actual subcontract; or

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

(d) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made:

(1) the Contractor agrees not to raise the following matters as a defense:

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

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

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

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

(2) Except as prohibited by subdivision (d)(2)(ii) of this clause:

(i) an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if:

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

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if:

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

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

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

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

52.214-28 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING. (OCT 1997)

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

(1) become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.403-4(a)(1); and

(2) be limited to such modifications.

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

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

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

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1).

52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)

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

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys

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

Definitions. As used in this contract--

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

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

52.217-4000 OPTION FOR ADDITIONAL WORK (Construction) (AUG 2000)

1. The Government may require the Contractor to perform the work identified as optional item(s) (CLIN(s) 0081 and 0082 at the price stated in the Schedule. The Contracting Officer may exercise the option(s) by written notice to the Contractor at any time before the required completion date stated in Section 00800 clause 52.211-10 or any extensions thereto. The Contracting Officer shall provide the Contractor notice of the Government's intent to exercise the option at least 30 calendar days in advance of exercising the option. Notice of intent to exercise the option shall not constitute an exercise of the option and shall not bind the government to exercise the option. If the Government should exercise the option(s) within 120 calendar days of the required completion date or any extension thereto, the Government shall extend the required contract completion date to 120 calendar days after the date of the exercise of the option.

2. Upon exercise of Option Item CLIN 0082, in addition to performing all work described in the plans and specifications that is to be performed in the Railroad right of way, the Contractor's obligations under the contract shall include, but are not limited to, the requirements and obligations that the Government is required to impose on its contractors by the "Agreement with Burlington Northern and Santa Fe Railway Company for Relocation, Rearrangement or Alteration of Facilities (Railroad Agreement)" - (See Section 830, Attachment E). The Contractor's obligations include, but are not limited to, the following:

- a. The Contractor, as required in Section 2. B. of the Railroad Agreement, shall enter into a Contractor's Right of Entry Agreement in the form attached to the Railroad Agreement as Exhibit "A," prior to commencing any work upon the Railroad's land.
- b. The Contractor, as required in Section 2. C. of the Railroad Agreement, shall:
 - i. Indemnify and defend the Railroad from and against all claims, loss, damage, costs or penalties arising from or related to contractor's work on the Project; and
 - ii. During the period of construction, name the Railroad as an additional insured on its general automobile liability policies; and
 - iii. During the period of construction, furnish waivers of subrogation in favor of the Railroad from its insurance carriers.
- c. The Contractor, as required in Section 2. H. of the Railroad Agreement, shall not obstruct, interfere with, or delay the maintenance or operations of existing Railroad Facilities without the prior written approval of the Railroad; and shall notify the Railroad in advance, prior to performing work on or adjacent to the Railroad's right of way and/or Railroad Facilities, so as to enable the Railroad to furnish, at the Contractor's expense, flagging and such other protective services as the Railroad deems necessary to ensure the safety of the railroad's operations.
- d. The Contractor, as provided in Section 3. B. of the Railroad Agreement, upon submission of a bill by the Railroad for flagging and other protective services, shall promptly pay the Railroad for such services.
- e. The Contractor, as required by Section 4. D. of the Railroad Agreement, shall, prior to commencing any work in the Railroads right of way, provide the insurance coverage specified in Section 4. D. of the Railroad Agreement. Prior to entry upon the Railroad's property, the Contractor shall furnish to

the Railroad, for approval, the original Certificate of Insurance, the original Policy, or other satisfactory evidence that all insurance which the Contractor is obliged to furnish has been obtained, and such evidence shall be resubmitted to the Railroad each September 1 and March 1 thereafter for as long as the Contractor is performing construction or maintenance on the Project.

f. The Contractor, as required in Section 5. a. of the Railroad Agreement, shall not go on or within 25 feet of the Railroads tracks, unless and until a flagman or flagmen are provided by the Railroad (at Contractor's expense) to watch for trains.

g. The Contractor, as required by Section 7. of the Railroad Agreement, shall, prior to beginning work, telephone the Railroads Communications Network Control Center to determine if cable systems are buried on the Railroad's property that is to be used by the Contractor. The Contractor, prior to commencing any work on the Railroad's property, shall contact the cable companies and the Railroad as to the protective measures that must be adhered to. The Contractor shall indemnify, defend, and hold the Railroad harmless against and from all cost, liability, and expense whatsoever (including without limitation, attorney fees and court costs and expenses) arising out of or in any way contributed by (1) any act or omission of the Contractor, its subcontractors, agents or employees. (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, arising out of or related to the Contractor's activities in the Railroad's right of way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies) arising out of or related to the Contractor's activities in the Railroad's right of way.

h. The Contractor, as required by Section 12 of the Railroad Agreement, in the event of an occurrence precipitated by the work on the Project, by the Contractor, which adversely affects the Railroad's train operations, shall have the responsibility for paying for or performing whatever corrective action is necessary to immediately restore the Railroad's train operations and reimburse the Railroad's other losses.

3. Exercise of the option shall be evidenced on Standard Form 30, citing this Section as the authority for exercising the option. Notice of intent to exercise the option shall be considered to have been given at the earlier of the occurrence of any of the following events: deposit of written notification in the mail, receipt by the Contractor of a facsimile notifying it of the Government's intent to exercise the option, or receipt by the Contractor of an e-mail notifying the Contractor of the Government's intent to exercise the option. The option shall be considered to have been exercised at the time the Government deposits written notification to the Contractor in the mail or, if earlier, at the time written notice is delivered to the Contractor.

52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JAN 1999)

(a) Definition. HUBZone small business concern, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) Evaluation preference. (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except--

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference;

(ii) Otherwise successful offers from small business concerns;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded (see 25.402 of the Federal Acquisition Regulation (FAR)); and

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer.

These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) Waiver of evaluation preference. A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

___ Offeror elects to waive the evaluation preference.

(d) Agreement. A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2000) ALTERNATE I (OCT 2000)

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

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

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

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

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

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

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

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

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

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. Service-disabled veteran-owned small business concerns meet the definition of veteran-owned small business concerns, and offerors may include them within the subcontracting plan goal for veteran-owned small business concerns. A separate goal for service-disabled veteran-owned small business concerns is not required. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of--

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

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

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

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

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

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

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

(i) Small business concerns;

- (ii) Veteran-owned small business concerns;
 - (iii) HUBZone small business concerns;
 - (iv) Small disadvantaged business concerns; and
 - (v) Women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.
- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—
- (i) Small business concerns;
 - (ii) Veteran-owned small business concerns;
 - (iii) HUBZone small business concerns;
 - (iv) Small disadvantaged business concerns; and
 - (v) Women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.
- (10) Assurances that the offeror will--
- (i) Cooperate in any studies or surveys as may be required;
 - (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
 - (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on

subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

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

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owner small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

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

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating--

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

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

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

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

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

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

(iv) Records of any outreach efforts to contact--

(A) Trade associations;

(B) Business development organizations;

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

(D) Veterans service organizations.

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

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

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

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

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

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

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

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

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

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

(1) the master plan has been approved, (2) the offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

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

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

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

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

(2) Standard Form 295, Summary Subcontract Report. This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System

(NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)

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

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

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

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

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

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

(End of clause)

52.222-6 DAVIS-BACON ACT (FEB 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and

fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

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

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

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

Goals for minority participation for each trade	Goals for female participation for each trade
Vernon County, WI – 0.6%	6.9%

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

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

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

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

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is [Contracting Officer shall insert description of the geographical areas where the contract is to be performed, giving

the State, county, and city].

52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

(5) 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.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items, as defined in FAR Part 2, the Contractor shall--

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUL 2000)

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUN 2000)

(a) Definitions. As used in this clause:

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitute a not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1542(c).

"Interested party" means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW., MS 2626-MIB, Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type contract.
- (ii) The target cost of a cost-plus-incentive-fee prime contract.
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
- (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe, or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of clause)

52.228-15 PERFORMANCE AND PAYMENT BONDS--CONSTRUCTION (JUL 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 14th Street, NW, 2nd 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)

52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (MAY 1997)

(a) Payment of price. The Government shall pay the Contractor the contract price as provided in this contract.

(b) Progress payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

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

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

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

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

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

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

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

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

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

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

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

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

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

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

(Name)

(Title)

(Date)

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

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

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

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

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

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

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

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

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

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

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

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 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 subparagraph (d)(2) of this clause shall be--

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

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

52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter

referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (JUN 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 this 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, except--

(1) The additional penalty shall not exceed \$5,000;

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

(3) 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 [insert day as prescribed by Agency head; if not prescribed, insert 30th day] 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 therefor 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

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

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

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

(ii) The date that any subsequent payment is reduced under 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.

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

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the 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.

52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Contractor EFT arrangements. If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(i) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(j) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the

Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of Clause)

52.232-35 DESIGNATION OF OFFICE FOR GOVERNMENT RECEIPT OF ELECTRONIC FUNDS
TRANSFER INFORMATION (MAY 1999)

(a) As provided in paragraph (b) of the clause at 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration, the Government has designated the office cited in paragraph (c) of this clause as the office to receive the Contractor's electronic funds transfer (EFT) information, in lieu of the payment office of this contract.

(b) The Contractor shall send all EFT information, and any changes to EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office, or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

(c) Designated Office:

Mailing Address:

U.S. Army Corps of Engineers
St. Paul District
190 East Fifth Street
St. Paul, MN 55101-1638

Telephone Number:

651/290-5233

Person to Contact:

Mr. Wayne Scheffel, CEMVP-RM-F

Electronic Address:

wayne.scheffel@usace.army.mil

(End of clause)

52.233-1 DISPUTES. (DEC 1998)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by

the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

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

(2)(i) The contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim -

(A) Exceeding \$100,000; or

(B) Regardless of the amount claimed, when using -

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting

Officer.

(End of clause)

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

The Contractor shall perform on the site, and with its own organization, work equivalent to at least **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.

52.236-2 DIFFERING SITE CONDITIONS (APR 1984)

As prescribed in 36.502, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The Contracting Officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

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

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

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

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

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

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

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

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to

(1) conditions bearing upon transportation, disposal, handling, and storage of materials;

(2) the availability of labor, water, electric power, and roads;

(3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;

(4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed

preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

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

52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)

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

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

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

52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

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

52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)

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

completed unit of work which may have been accepted under the contract.

52.236-8 OTHER CONTRACTS (APR 1984)

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

52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities

(1) at or near the work site, and

(2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

52.236-10 OPERATIONS AND STORAGE AREAS (APR 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

52.236-11 USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

52.236-12 CLEANING UP (APR 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

52.236-13 ACCIDENT PREVENTION (NOV 1991) – ALTERNATE I (NOV 1991)

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

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

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

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

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

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

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

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

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to

promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

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

(f) Before commencing the work, the Contractor shall-

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

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

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

52.236-16 QUANTITY SURVEYS (APR 1984) - ALTERNATE I (APR 1984)

(a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

(b) The Contractor shall conduct the original and final surveys and surveys for any periods for which progress payments are requested. All these surveys shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance. The Government shall make such computations as are necessary to determine the quantities of work performed or finally in place. The Contractor shall make the computations based on the surveys for any periods for which progress payments are requested.

(c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The

Contractor shall retain copies of all such material furnished to the Contracting Officer.

52.236-17 LAYOUT OF WORK (APR 1984)

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

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

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of

the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

52.236-26 PRECONSTRUCTION CONFERENCE (FEB 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

52.242-14 SUSPENSION OF WORK (APR 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract. (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

52.243-4 CHANGES (AUG 1987)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes--

(1) In the specifications (including drawings and designs);

- (2) In the method or manner of performance of the work;
 - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.
- (b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating
- (1) the date, circumstances, and source of the order and
 - (2) that the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this clause within 30 days after
- (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.
- (f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)

(a) Definitions.

"Commercial item", as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract", as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

- (1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and

(4) 52.247-64, Preference for Privately-Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241)(flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

52.245-1 PROPERTY RECORDS (APR 1984)

The Government shall maintain the Government's official property records in connection with Government property under this contract. The Government Property clause is hereby modified by deleting the requirement for the Contractor to maintain such records.

52.245-3 IDENTIFICATION OF GOVERNMENT-FURNISHED PROPERTY (APR 1984)

(a) The Government will furnish to the Contractor the property identified in the Schedule to be incorporated or installed into the work or used in performing the contract. The listed property will be furnished f.o.b. railroad cars at the place specified in the contract Schedule or f.o.b. truck at the project site. The Contractor is required to accept delivery, pay any demurrage or detention charges, and unload and transport the property to the job site at its own expense. When the property is delivered, the Contractor shall verify its quantity and condition and acknowledge receipt in writing to the Contracting Officer. The Contractor shall also report in writing to the Contracting Officer within 24 hours of delivery any damage to or shortage of the property as received. All such property shall be installed or incorporated into the work at the expense of the Contractor, unless otherwise indicated in this contract.

(b) Each item of property to be furnished under this clause shall be identified in the Schedule by quantity, item, and description.

52.245-19 GOVERNMENT PROPERTY FURNISHED "AS IS" (APR 1984)

(a) The Government makes no warranty whatsoever with respect to Government property furnished "as is," except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the Contractor pursuant to the solicitation or, if not inspected by the Contractor, as when last available for inspection under the solicitation.

(b) The Contractor may repair any property made available on an "as is" basis. Such repair will be at the Contractor's expense except as otherwise provided in this clause. Such property may be modified at the Contractor's expense, but only with the written permission of the Contracting Officer. Any repair or modification of property furnished "as is" shall not affect the title of the Government.

(c) If there is any change in the condition of Government property furnished "as is" from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation, and such change will adversely affect the Contractor, the Contractor shall, upon receipt of the property, notify the Contracting Officer detailing the facts and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of the property or (2) effect repairs to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with the procedures provided for in the Changes clause of this contract. The foregoing provisions for adjustment are the

exclusive remedy available to the Contractor, and the Government shall not be otherwise liable for any delivery of Government property furnished "as is" in a condition other than that in which it was originally offered.

(d) Except as otherwise provided in this clause, Government property furnished "as is" shall be governed by the Government Property clause of this contract.

52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not--

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an

equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

52.248-3 VALUE ENGINEERING--CONSTRUCTION (FEB 2000) - ALTERNATE I (APR 1984)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) below.

(b) Definitions. "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) below).

"Value engineering change proposal (VECP)" means a proposal that--

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change--

(i) In deliverable end item quantities only; or

(ii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) Government action. (1) The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing.

(1) Rates. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (i) 45 percent for fixed-price contracts or (ii) 75 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to--

(i) Accept the VECP;

(ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the

Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(h) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering--Construction clause of contract, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(j) Collateral savings. If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.

(End of clause)

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996) - ALTERNATE I (SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (g) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of--

(i) The cost of this work;

- (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and
- (iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.
- (2) The reasonable costs of settlement of the work terminated, including--
- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
- (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.
- (i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted--
- (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
- (2) Any claim which the Government has against the Contractor under this contract; and
- (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.
- (l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.
- (m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is

received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if--

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

(i) acts of God or of the public enemy,

(ii) acts of the Government in either its sovereign or contractual capacity,

(iii) acts of another Contractor in the performance of a contract with the Government,

(iv) fires,

(v) floods,

(vi) epidemics,

(vii) quarantine restrictions,

(viii) strikes,

(ix) freight embargoes,

(x) unusually severe weather, or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts

and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

52.252-2 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):

<http://www.arnet.gov>

52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

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

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

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)

252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION.(MAR 2000)

(a) Definitions.

As used in this clause--

(1) Central Contractor Registration (CCR) database means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) Registered in the CCR database means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, 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 confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at <http://www.ccr2000.com>.

(End of clause)

252.219-7003 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS
SUBCONTRACTING PLAN (DOD CONTRACTS) (APR. 1996)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, clause of this contract.

(a) *Definitions. Historically black colleges and universities*, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions, as used in this clause, means institutions meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) Except for company or division-wide commercial items subcontracting plans, the term *small disadvantaged business*, when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46-48), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Pub. L. 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded--

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(End of clause)

252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)

(a) "Definitions".

As used in this clause --

(1) "Storage" means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

(2) "Toxic or hazardous materials" means:

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

(End of clause)

252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (AUG 2000)

(a) The Contractor agrees to deliver under this contract only such of the following articles that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico --

- (1) Food;
- (2) Clothing;
- (3) Tents, tarpaulins, or covers;
- (4) Cotton and other natural fiber products;
- (5) Woven silk or woven silk blends;
- (6) Spun silk yarn for cartridge cloth;
- (7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics;
- (8) Canvas products;
- (9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or
- (10) Any item of individual equipment (Federal supply Classification 8465) manufactured from or containing such fibers, yarns, fabrics, or materials.

(b) This clause does not apply --

- (1) To supplies listed in FAR section 25.104(a), or other supplies for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;
- (2) To foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico;
- (3) To chemical warfare protective clothing produced in the countries listed in subsection 225.872-1 of the Defense FAR Supplement; or
- (4) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if--
 - (i) The fabric is to be used as a component of an end item that is not a textile product. Examples of textile products, made in whole or in part of fabric, include--
 - (a) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);
 - (B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;
 - (C) Upholstered seats (whether for household, office, or other use); and
 - (D) Parachutes (Federal Supply Class 1670); or
 - (ii) The fibers and yarns are para-aramid fibers and yarns manufactured in the Netherlands.

(End of clause)

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

(1) "Foreign person" means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

(2) "United States person" is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concerns, as determined under regulations of the President.

(b) Certification. By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it--

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(End of clause)

252.227-7033 RIGHTS IN SHOP DRAWINGS (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

When the allowability of costs under this contract is determined in accordance with part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with part 231 of the Defense FAR Supplement, in effect on the date of this contract.

252.236-7000 MODIFICATION PROPOSALS - PRICE BREAKDOWN. (DEC 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown --

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for --

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

- (2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.
- (c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.
- (d) The Contractor's proposal shall include a justification for any time extension proposed.

252.236-7002 OBSTRUCTION OF NAVIGABLE WATERWAYS. (DEC 1991)

(a) The Contractor shall --

- (1) Promptly recover and remove any material, plant, machinery, or appliance which the 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 obstructions, 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; or
- (3) Recover the cost of removal under the Contractor's bond.

(c) The Contractor's liability for the removal of a 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.).

252.236-7008 CONTRACT PRICES - BIDDING SCHEDULES. (DEC 1991)

(a) The Government's payment for the items listed in the Bidding Schedule shall constitute full compensation to the Contractor for --

- (1) Furnishing all plant, labor, equipment, appliances, and materials; and
- (2) Performing all operations required to complete the work in conformity with the drawings and specifications.

(b) The Contractor shall include in the prices for the items listed in the Bidding Schedule all costs for work in the specifications, whether or not specifically listed in the Bidding Schedule.

252.242-7000 POSTAWARD CONFERENCE (DEC 1991)

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation subpart 42.5.

(End of clause)

252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

252.243-7000 ENGINEERING CHANGE PROPOSALS (SEP 1999) - ALTERNATE I (MAY 1994)

(a) The Contracting Officer may ask the Contractor to prepare engineering change proposals for engineering changes within the scope of this contract. Upon receipt of a written request from the Contracting Officer, the Contractor shall prepare and submit an engineering change proposal in accordance with the instructions of MIL-STD-973, in effect on the date of contract award.

(b) The Contractor may initiate engineering change proposals. Contractor initiated engineering change proposals shall include a "not to exceed" price* or a "not less than" price* and delivery adjustment. If the Contracting Officer orders the engineering change, the increase shall not exceed nor the decrease be less than the "not to exceed" or "not less than" amounts**.

When the price** of the engineering change is \$500,000 or more, the Contractor shall submit--

A completed SF 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required); and

(2) At the time of agreement on price*, or on another date agreed upon between the parties, a signed Certificate of Current Cost or Pricing Data.

(d) If the price* of a Contractor initiated engineering change is \$1,000 or less, the change, if ordered, shall be made at no adjustment in the contract price*.

*Use a term suitable for the type of contract.

**In cost reimbursement type contracts, replace this sentence with the following: "Change orders issued under the Changes clause of this contract are not an authorization to exceed the estimated cost in the schedule unless there is a statement in the change order, or other contract modification, increasing the estimated cost."

***Insert a percentage of the contract price or a dollar amount.

(End of clause)

252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

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

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

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

(Official's Name)

 (Title)

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

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to----

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

252.246-7000 MATERIAL INSPECTION AND RECEIVING REPORT (DEC 1991)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a Material Inspection and Receiving Report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(End of clause)

252.248-7000 PREPARATION OF VALUE ENGINEERING CHANGE PROPOSALS (MAY 1994)

Prepare value engineering change proposals, for submission pursuant to the value engineering clause of this contract, in the format prescribed by the version of MIL-STD-973 in effect on the date of contract award.

(End of clause)

52.246-4001 LABORATORY AND TESTING FACILITIES

The Contractor shall provide and maintain all measuring and testing devices, laboratory equipment, instruments, transportation, and supplies necessary to accomplish the required testing. All measuring and testing devices shall be calibrated at established intervals against certified standards. The Contractor's measuring and testing equipment shall be made available for use by the Government for verification of their accuracy and condition as well as for any inspection or test desired pursuant to SECTION 00800: INSPECTION OF CONSTRUCTION. The location of the laboratory shall be convenient to the site such that test results are available prior to proceeding with the next sequential phase of the work.

SECTION 00800 Special Contract Requirements

CLAUSES INCORPORATED BY FULL TEXT

52.000-4004 PARTNERING

The Government proposes to form a partnering relationship with the contractor. This partnering relationship will strive to facilitate communication and draw on the strengths of each organization in an effort to achieve a quality project, within budget, and on schedule. Participation will be totally voluntary. Partnering will not alter or supersede any provision of this contract nor will it provide either party with any additional contractual rights or obligations. Participation in partnering will not affect award of this contract. Any cost associated with this partnering will be agreed to by both parties and will be shared equally, with no change in contract price.

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

The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 1095 calendar days after receipt of Notice to Proceed. The time stated for completion shall include final cleanup of the premises.

The completion date is based on the assumption that the successful offeror will receive the notice to proceed by 20 September 2000. The completion date will be extended by the number of calendar days after the above date that the Contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the Contractor to execute the contract and give the required performance and payment bonds within the time specified in the offer.

(End of clause)

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 including that of the options items if exercised, the Contractor shall pay to the Government as liquidated damages, the sum of \$740.00 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.

(End of clause)

52.212-5000 EVALUATION OF SUBDIVIDED ITEMS (MAR 1995)--EFARS

Item Nos. 0009AA & AB, 0010AA & AB, 0046AA & AB, 0048AA & AB, 0049AA & AB, 0050AA & AB, 0051AA & AB, 0052AA & AB, and 0053AA & AB are subdivided into two or more estimated quantities and are to be separately priced. The Government will evaluate each of these items on the basis of total price of its sub-items.

(End of provision)

52.212-4003 TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER (OCT 1989) ER 415-1-15

a. This provision specifies the procedure for the determination of time extensions for unusually severe weather in accordance with the CONTRACT CLAUSES: DEFAULT (FIXED-PRICE CONSTRUCTION). In order for the Contracting Officer to award a time extension under this clause, the following conditions must be satisfied:

- 1) 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.
- 2) 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.

b. 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
WORKDAYS BASED ON (5) DAY WORKWEEK.

GEOGRAPHIC LOCATION -- Genoa, Wisconsin (Dam8)

Month	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Days	16	11	6	4	5	5	5	5	4	3	5	13

c. 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 workday. 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 b, 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 CLAUSES: DEFAULT (FIXED-PRICE CONSTRUCTION).

52.212-5001 VARIATIONS IN ESTIMATED QUANTITIES, SUBDIVIDED ITEMS
(MAR 1995)--EFARS

This variation in estimated quantities clause is applicable only to Item Nos. 0009, 0010, 0046, 0048, 0049, 0050, 0051, 0052, and 0053.

- (a) Variation from the estimated quantity in the actual work performed under any second or subsequent sub-item or elimination of all work under such a second or subsequent sub-item will not be the basis for an adjustment in contract unit price.
- (b) Where the actual quantity of work performed for Items Nos. 0009AA & AB, 0010AA & AB, 0046AA & AB, 0048AA & AB, 0049AA & AB, 0050AA & AB, 0051AA & AB, 0052AA & AB, and 0053AA & AB is less than 85% of the quantity of the first sub-item listed under such item, the contractor will be paid at the contract unit price for that sub-item for the actual quantity of work performed and, in addition, an equitable adjustment shall be made in accordance with the clause FAR 52.211-18, Variation in Estimated Quantities.
- (c) If the actual quantity of work performed under Items Nos. 0009AA & AB, 0010AA & AB, 0046AA & AB, 0048AA & AB, 0049AA & AB, 0050AA & AB, 0051AA & AB, 0052AA & AB, and 0053AA & AB exceeds 115% or is less than 85% of the total estimated quantity of the sub-item under that item and/or if the quantity of the work performed under the second sub-item or any subsequent sub-item under Items Nos.

0009AA & AB, 0010AA & AB, 0046AA & AB, 0048AA & AB, 0049AA & AB, 0050AA & AB, 0051AA & AB, 0052AA & AB, 0052AA & AB, and 0053AA & AB exceeds 115% or is less than 85% of the estimated quantity of any such sub-item, and if such variation causes an increase or a decrease in the time required for performance of this contract the contract completion time will be adjusted in accordance with the clause FAR 52.211-18, Variation in Estimated Quantities.

(End of clause)

52.228-4003 RAILROAD PROTECTIVE LIABILITY INSURANCE

a. In addition to any other insurance required by this contract, the Contractor shall furnish railroad protective liability insurance in accordance with the Standard Provisions for General Liability Policies (Railroad Protective Liability Form), the form of which shall be subject to the approval of the Contracting Officer. Said policy shall provide coverage for bodily injury liability, property damage liability and physical damage to property in the amount of \$2,000,000 (two million dollars) per each occurrence and \$6,000,000 (six million dollars) in the aggregate. The _____ shall be named as the insured under said railroad protective liability policy.

b. No work shall be performed within the right-of-way of the _____ prior to the approval of the railroad protective liability insurance by the Contracting Officer. Said insurance shall remain in force and the Contractor completes AND the Government accepts all work to be performed in the railroad's right-of-way.

c. The Contractor shall, at least 5 (five) business days prior to commencing any work within the railroad's right-of-way, submit to the Contracting Officer a certificate of insurance warranting that the railroad protective insurance policy is in force and effect in accordance with the requirements of this contract. A duplicate original of said certificate shall be submitted to the railroad at the same time.

d. The Contractor shall, at the request of the railroad or the Government, provide a copy of the railroad protective insurance policy to the entity requesting it.

e. The railroad protective insurance policy and the certification of insurance shall contain an endorsement that any cancellation of, or change in, said policy shall not be effective unless written notice is given to the Contracting Officer AND the railroad at least 30 (thirty) days prior to the cancellation or change. The insurer's cancellation or modification of the insurance coverage shall in no way relieve the Contractor of its obligation to maintain insurance coverage in accordance with the terms of this contract.

52.228-4022 REQUIREMENT FOR BID GUARANTEE (FAR 28.101-2)

Each bidder shall submit with its bid a Bid Bond (Standard Form 24) with good and sufficient surety or sureties acceptable to the Government or other security as provided in the clause BID GUARANTEE in the form of twenty percent (20%) of the bid price or \$3,000,000 whichever is lesser. The bid bond penalty may be expressed in terms of a percentage of the bid price or may be expressed in dollars and cents.

52.231-5000 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE
MAR 1995)—EFARS

(a) This clause does not apply to terminations. See 52.249-5000, Basis for Settlement of Proposals and FAR Part 49.

(b) 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 IV. 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 retroactive pricing, the schedule in effect at the time the work was performed shall apply.

(c) Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36. Rates for equipment rented from an organization under common control, lease-purchase arrangements, and sale-leaseback arrangements, will be determined using the schedule, except that actual rates will be used for equipment leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees.

(d) When actual equipment costs are proposed and the total amount of the pricing action exceeds the small purchase threshold, the contracting officer shall request the contractor to submit either certified cost or pricing data, or partial/limited data, as appropriate. The data shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet.

(End of clause)

52.232-4004 INVOICE PROCEDURES

In accordance with CONTRACT CLAUSE titled "PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS", the contractor shall submit invoices as follows:

a. In order to qualify for a periodic payment, the Contractor must submit a proper invoice (request for payment) to the Contracting Officer's Representative (COR) and a determination must be made that supplies or services conform to the contract requirements. This determination will be made for the sole purpose of processing progress payments and will not constitute formal acceptance. The due date for making progress payments shall be as stated in the contract clause: PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS.

b. The submitted request for payment must be accompanied with documentation adequate to substantiate the amount requested. Substantiation shall be consistent with the clauses in the solicitation titled Quantity Surveys, Purchase Orders, Invoices, etc. satisfactory to the COR.

c. The Contractor must also include with the payment request a certification as described in the Clause "PAYMENT UNDER FIXED-PRICE CONSTRUCTION CONTRACTS".

d. Payment requests will be reviewed for propriety by the COR. Defective invoices will be returned to the Contractor for resolution with defects identified. Along with the returned invoice, the COR may include, at its option, an ENG FORM 93-PAYMENT ESTIMATE reflecting the substantiated and uncontested payment amount. The Contractor will then be given the option of signing and returning the FORM 93 for payment along with the original invoice and certification or resubmitting a revised invoice and certification. To expedite payment, the Contractor may request in writing that the COR retain the defective invoice and immediately process the payment request at the amount determined to be acceptable to the Government.

52.232-5001 CONTINUING CONTRACTS (MAR 1995)—EFARS

(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, and from future contribution to the project having one or more non-federal project sponsors. 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) The sum of \$1 million 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 together with funds provided by one or more non-federal project sponsors will be reserved for this contract.

(c) Failure to make payments 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 (f) and (i) 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.

(d) 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 modification to the contract.

(e) 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.

(f) 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, as in effect on the first day of the delay in such payment.

(g) Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not 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.

(h) 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.

(i) 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.

(j) 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.

(End of clause)

52.236-4 PHYSICAL DATA (APR 1984)

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

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by surveys and subsurface exploration. The subsurface exploration included soil borings and soil

testing (both in the field and in the laboratory) noted on the boring logs. Graphic logs of borings located within the area of work under this contract are shown on the drawings. The borings are representative of subsurface conditions at their respective locations and for their respective vertical reaches. Variations in stratigraphy and characteristics of the soil and rock are known to occur between borings. Normal variations in site geology will not be considered as differing materially within the purview of Contract Clause FAR 52.236-2, Differing Site Conditions. Ground water elevations measured in borings are not constant and will fluctuate.

(b) Weather conditions: Before submitting a bid, bidders should satisfy themselves before submitting as to the potential hazards from weather conditions. Complete weather records and reports may be obtained from the local U.S. weather Service.

(c) Transportation facilities: Before submitting a bid, bidders should obtain necessary data as to access of highway and railroad facilities. The unavailability of transportation facilities shall not become a basis for claims for damages or time for completion of the work.

(d) River Conditions: Hydrographs of the river stages are indicated on the drawings. These hydrographs include historic water levels and/or flows at the gauging stations. The Contractor has the responsibility to schedule its operations to take advantage of the most favorable river stages.

(End of clause)

(R 7-603.25 1965 JAN)

52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

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

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

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

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the

Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

52.236-26 PRECONSTRUCTION CONFERENCE (FEB 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

52.236-4012 MATERIAL SOURCES

- a. Concrete aggregate and stone protection materials meeting the requirements of these specifications can be produced from the sources listed in Section 00830 "Attachments":
- b. Materials may be furnished from any of the listed sources or at the option of the Contractor may be furnished from any other sources designated by the Contractor and approved by the Contracting Officer, subject to the conditions hereinafter stated.
- c. After the award of the contract, the Contractor shall designate in writing only one source for each type of material or one combination of sources from which he proposes to furnish the materials. If the Contractor proposes to furnish materials from a source or from sources not listed, he may designate only a single source for each type of material or single combination of sources for materials. Samples for acceptance testing shall be provided as required by the TECHNICAL PROVISIONS. If a source for materials so designated by the Contractor is not approved for use by the Contracting Officer, the Contractor may not submit for approval other sources but shall furnish the materials from approved sources selected from the list at no additional cost to the Government.
- d. Approval of a source of materials is not to be construed as approval of all material from that source. The right is reserved to reject materials from certain localized areas, zones, strata, or channels, when such materials are unsuitable as determined by the Contracting Officer. Materials produced from an approved source shall meet all the requirements of the TECHNICAL PROVISIONS of these specifications.

52.236-4014 PURCHASE ORDERS

Two legible copies of each purchase order issued by the Contractor or the Contractor's subcontractors for materials and equipment to be incorporated into the project, shall be furnished the Contracting Officer as soon as issued. Each purchase order shall (1) be clearly identified with applicable Department of Army contract number, (2) carry and identifying number, (3) be in sufficient detail to identify the material being purchased, and (4) indicate a definite delivery date. At the option of the Contractor, the copies of the purchase orders may or may not indicate the price of the articles purchased.

52.236-4025 FLOATING PLANT EQUIPMENT (MAY 1999)

When mechanized equipment is operated on floating plant, the contractor shall provide positive and acceptable means of preventing this equipment from moving or falling into the water. The type of equipment addressed by this clause includes front-end loaders, bulldozers, trucks (both on and off-road), backhoes, trackhoes, and similar equipment. If the Contractor plans to use such equipment on floating plant, an activity hazard analysis must be developed for this feature of work. The plan must include a detailed explanation of the type or types of physical barriers, curbs, structures, etc., which will be incorporated to protect the operator and prevent the equipment from entering the water. Nonstructural warning devices may be considered for situations where the use of structural barriers is determined to be impracticable. The activity hazard analysis must thoroughly address the procedure and be submitted to the Corps of engineers for review and acceptance prior to start of this feature of work.

52.236-4061 OBSTRUCTION OF CHANNEL

The Government will not undertake to keep the channel free from vessels or other obstructions, except to the extent of such regulations, if any, as may be prescribed by the Secretary of the Army, in accordance with the Provisions of Section 7 of the River and Harbor Act approved August 8, 1917. The Contractor will be required to conduct the work in such manner as to obstruct navigation as little as possible. The Contractor shall consult with the appropriate Coast Guard office to determine whether a Notice to Mariners will need to be issued for construction-related activities that might interfere with navigation or be interfered with by such navigation. (Point of Contact: Marine Safety Detachment, St. Paul, Minnesota, 651-290-3991) If the Contractor's plant so obstructs the channel as to make difficult or endanger the passage of vessels, said plant shall be promptly moved on the approach of any vessel to such an extent as may be necessary to afford a practicable passage. Upon the completion of the work the Contractor shall promptly remove his plant, including ranges, buoys, piles, and other marks placed by him under the contract whether in navigable waters or on shore.

52.236-4062 SIGNAL LIGHTS (JAN 1965)

The Contractor shall display signal lights and conduct his operations in accordance with the General Regulation of the Department of the Army and 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 or floating plant working in navigable channels, as set forth in Commandant U.S. Coast Guard instruction M16672.2B, navigation rules: International-Inland (COMDTINST) M16672.2B, or 33 CFR 81 Appendix A (International) and 33 CFR 84 through 33 CFR (Inland) as applicable.

52.236-4063 RADIO

The Contractor shall maintain a staff that is knowledgeable about radio communications to advise oncoming navigation of appropriate passing directions while the Contractor's floating plant is in the navigation channel. In particular, the Contractor shall monitor Marine Band Channel 13 for commercial navigation and Channel 16 for emergency communication.

252.236-7001 CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS. (DEC 1991)

(a) The Government --

(1) Will provide the Contractor, without charge, a CD of large-scale contract drawings and specifications except publications incorporated into the technical provisions by reference;

(2) Will furnish additional sets on request, for the cost of reproduction; and

(3) May, at its option, furnish the Contractor one set of reproducible, or half-size drawings, in lieu of the drawings in paragraph (a)(1) of this clause.

(b) The Contractor shall --

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies; and

(4) Be responsible for any errors which might have been avoided by complying with this paragraph (b).

(c) Large scale drawings shall, in general, govern small scale drawings. Figures marked on drawings shall, in general, be followed in preference to scale measurements.

(d) 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 shall be performed as if fully and correctly set forth and described in the drawings and specifications.

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

Title File and Drawing No.

52.239-4001 YEAR 2000 COMPLIANCE (FAR 39.106) (JUL 1998)

The contractor shall ensure that, with respect to any design, construction, goods, or services under this contract as well as any subsequent task/delivery orders issued under this contract (if applicable), all information technology contained therein shall be Year 2000 compliant. Specifically, the contractor shall perform, maintain, and provide an inventory of all major components to include structures, equipment, items, parts, and furnishings under this contract and each task/delivery order which may be affected by the Year 2000 compliance requirement.

52.242-14 SUSPENSION OF WORK (APR 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract. (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

52.245-4002 GOVERNMENT-FURNISHED PROPERTY IDENTIFICATION AND LOCATION

(a) The Government will furnish to the Contractor the property listed below to be incorporated or installed into the work or used in performing the contract. The Contractor shall arrange for pickup of the Government furnished property, which is located in the storage building at Lock 5A. The Contractor shall arrange pickup of the property by contacting Melissa Gulan at Telephone No. 507-454-6150. When the property is picked up, the Contractor shall verify its quantity and condition and acknowledge receipt in writing to the Contracting Officer. The Contractor shall also report in writing to the Contracting Officer within 24 hours of pickup any damage to or shortage of the property as received. All such property shall be installed or incorporated into the work at the expense of the Contractor, unless otherwise indicated in this contract.

(b) The following is a list of Government-Furnished Property:

Quantity	Item	Description
1 each	MDP-1	Main Distribution Panel.....
1 each	MCC	Motor Control Center.....
1 each	MCC-2	Motor Control Center (for lighting).....
1 each	CS-1	Control Stand.....
1 each	CS-2	Control Stand.....
1 each	300kw	Standby Generator (Onan Model #300DFCB).....
1 each	Automatic	Transfer Switch (Onan Model # OTCU-800G 179G).....
1 each	Muffler
1 each	Raincap
1 each	Pipe	Package.....
1 each	Alarm	Annunciator.....
4 each	Vibration	Damper.....

- 2 each Battery.....
- 1 each Day Tank.....
- 6 each Literature List.....
- 8 each Service Manual.....
- 2 each limit Switches for Small Boat Signal.....
- 2 each River Level Digital Display Instruments.....
- 2 each River Level Transmitters.....
- 1 each 175 Brass Plate and Anchor Rod for Bench Mark.....

Note: All items except the Literature List and Service Manual are to be installed by the Contractor. The river level digital display instruments, river level transmitter, and the brass plate and anchor rod for bench mark will be supplied by the Contractor at the construction site. All other items are located at the storage building at Lock 5A, and the Contractor is responsible for pickup and transport of these items. Government furnished property availability shall be coordinated with the Contracting Officer.

Note all items requiring relocation and/or reinstallation by the Contractor are shown on this list.

(1) Quantities indicated for the above-listed items which are marked with an asterisk are estimated. It is the intention of the Government to furnish all of these items required to complete the work as specified and the various quantities will be adjusted when necessary.

(2) Quantities stated for the above items which are not marked with an asterisk are all that will be furnished by the Government. These quantities are not to be considered as indications or warranties that the amounts stated will either be sufficient or insufficient. The Contractor will be required to furnish any additional quantities required.

52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not--

- (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
- (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
- (3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes

reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

52.249-5000 BASIS FOR SETTLEMENT OF PROPOSALS

“Actual costs will be used to determine equipment costs for a settlement proposal submitted on the total cost basis under FAR 49.206-2(b). In evaluating a terminations 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 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.”

(End of Clause)

SECTION 00830

LIST OF ATTACHMENTS

<u>ATTACHMENT</u>	<u>TITLE</u>	<u>Page</u>
A.	LIST OF KNOWN MATERIAL SOURCES	00830-A-1
B.	LOCK CLOSING AND OPENING DATES	00830-B-1
C.	WAGE RATES	00830-C-1
	Vernon County, Wisconsin - Heavy Construction	
	Vernon County, Wisconsin - Building Construction	
D.	WELL LOG	00830-D-1
	Log of the abandoned water supply well installed in 1939, 1 page.	
E.	RAILROAD AGREEMENT	00830-E-1

ATTACHMENT A

LIST OF KNOWN MATERIAL SOURCES

<u>Source</u>	<u>Location</u>
FINE AGGREGATE (SAND)	
Winona Aggregate Company Rt. 20 Winona, MN 55987 (507) 454-2913	SE ¼ Sec. 12, T 107 N, R 8 W, Winona County, Minnesota
Scherr Pit Mathy Construction Co. 915 Commercial Court Onalaska, WI 54650 (608) 783-6411	Sec. 19, T 18 N, R 8 W. Trempealeau County, Wisconsin
COARSE AGGREGATE (3/4" - # 4 SIEVE)	
Abnet Quarry La Crescent Rock Products Rt. 3 Box 135 La Crescent MN 55947 (507) 895-4202	Sec. 2 T 104 N, R 5 W Houston County, Minnesota
Winona Aggregate Company Rt. 20 Winona, MN 55987 (507) 454-2913	SE ¼ Sec. 12, T 107 N, R 8 W, Winona County, Minnesota
COARSE AGGREGATE (3/4 " - 1 ½ ")	
Smith Pit Croel Ready Mix Box 2046 LaCrosse, Wisconsin (608) 781- 3200	Sec. 20, T 22 N, R 3 W Jackson County, Wisconsin
Winona Aggregate Company Rt. 20 Winona, MN 55987 (507) 454-2913	SE ¼ Sec. 12, T 107 N, R 8 W, Winona County, Minnesota

RIPRAP

Bendel Quarry
Bendel & Starch Excavating
Rt 1 Box 252A
Stoddard, WI 54658
(608) 788- 2385

SE $\frac{1}{4}$ Sec. 32, T 15 N, R 6 W
LaCrosse County, Wisconsin
(See Note 1)

Medary Quarry
Mathy Construction Co.
915 Commercial Court
Onalaska, WI 54650
(608) 783-6411

Sec. 22, T 13 N, R 7 W
LaCrosse County, WI
(See Note 1)

Pedretti Quarry
The Kraemer Co.
P.O. Box 235
Plain, WI 53577
(608) 546-2255

NW $\frac{1}{4}$, Sec. 27, T 13 N, R 7 W
Vernon County, Wisconsin
(see Notes 1 & 2)

Notes:

(1) Processing over a vibratory grizzly shall be a minimum requirement from all sources.

(2) Rock production shall be from the west side of quarry. The chemically and physically altered rock in the lower portion of the quarry shall be excluded or removed through processing.

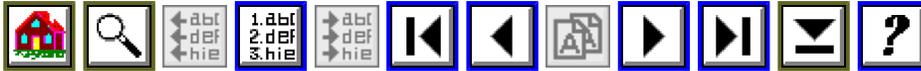
ATTACHMENT B

LOCK CLOSING AND OPENING DATES

LOCK AND DAM NO.8
Mississippi River
GENOA, WISCONSIN

<u>Navigation Season</u>	<u>Lock Opened to Navigation</u>	<u>Lock Closed to Navigation</u>
2000	MARCH 01	
1999	MARCH 07	DECEMBER 15
1998	MARCH 03	DECEMBER 14
1997	MARCH 17	NOVEMBER 17
1996	MARCH 21	NOVEMBER 29
1995	MARCH 12	DECEMBER 04
1994	MARCH 18	NOVEMBER 30
1993	MARCH 19	DECEMBER 01
1992	MARCH 08	DECEMBER 02
1991	MARCH 21	NOVEMBER 25
1990	MARCH 12	DECEMBER 01
1989	MARCH 26	NOVEMBER 25

ATTACHMENT C
WAGE RATES



General Decision Number WI000003

General Decision Number WI000003
 Superseded General Decision No. WI990003
 State: **Wisconsin**
 Construction Type:
 BUILDING
 County(ies):
 CRAWFORD RICHLAND
 LA CROSSE **VERNON**
 BUILDING CONSTRUCTION PROJECTS (does not include residential
 construction consisting of single family homes and apartments up
 to and including 4 stories)
 Modification Number Publication Date
 0 02/11/2000
 1 06/02/2000
 2 07/28/2000
 3 08/18/2000
 4 09/15/2000

COUNTY(ies):
 CRAWFORD RICHLAND
 LA CROSSE **VERNON**
 ASBE0019A 06/01/2000

	Rates	Fringes
INSULATORS/ASBESTOS WORKERS Includes the application of all insulating materials; protective coverings, coatings, and finishes to all types of mechanical systems	25.76	9.22

	Rates	Fringes
ASBE0205A 06/01/1999 ASBESTOS REMOVAL WORKER / HAZARDOUS MATERIAL HANDLER Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not	16.55	3.45

	Rates	Fringes
* BOIL0107A 07/01/2000 BOILERMAKERS SMALL BOILER REPAIR (Under 25,000 lbs/hour)	19.40	7.20

	Rates	Fringes
BRWI0001C 06/01/2000 CRAWFORD, LA CROSSE, AND VERNON COUNTIES BRICKLAYERS; MARBLE SETTERS AND TILE LAYERS	22.69	7.90

	Rates	Fringes
BRWI0013C 06/01/2000 RICHLAND COUNTY BRICKLAYERS	24.08	8.20

CARP0252D	06/01/2000	
	Rates	Fringes
LA CROSSE AND VERNON COUNTIES		
CARPENTERS	22.11	6.93
MILLWRIGHTS	23.66	6.93
PILEDRIVERS	22.61	6.93

CARP0264F	06/01/2000	
	Rates	Fringes
CRAWFORD AND RICHLAND COUNTIES		
CARPENTERS	21.96	7.12
MILLWRIGHTS	23.61	7.12
PILEDRIVERS	22.46	7.12

ELEC0014A	06/01/2000	
	Rates	Fringes
ELECTRICIANS	22.80	27.5%+2.94

* ELEC0014F	06/01/1999	
	Rates	Fringes
Low volatage construction, installation, maintenance and removal of teledata facilities (voice, data, and video) including outside plant, telephone and data inside wire, interconnect, terminal equipment, central offices, PABX, fiber optic cable and equipment, micro waves, V-SAT, bypass, CATV, WAN (wide area networks), LAN (local area networks), and ISDN (integrated systems digital network).		
TELEDATA TECHNICIAN I	17.34	2.53+3%
TELEDATA INSTALLER	14.78	2.53+3%

ENGI0139B	06/01/2000	
	Rates	Fringes
POWER EQUIPMENT OPERATORS:		
GROUP 1	25.57	10.00
GROUP 2	25.07	10.00
GROUP 3	24.57	10.00
GROUP 4	24.04	10.00
GROUP 5	21.97	10.00
GROUP 6	21.34	10.00
POWER EQUIPMENT OPERATORS CLASSIFICATIONS		
GROUP 1: Cranes, Tower Cranes and Derricks with or without attachments with a lifting capacity of over 100 tons; Cranes, Tower Cranes, and Derricks with boom, leads and/or jib lengths 176 ft or longer.		
GROUP 2: Backhoes (Excavators) having a manufacturer's rated capacity of 3 cu yd and over; Cranes, Tower Cranes and Derricks with or without attachments with a lifting capacity of 100 tons or less; Cranes, Tower Cranes, and Derricks with boom, leads, and/or jib lengths 175 ft or less; Caisson Rigs; Pile Driver		
GROUP 3: Backhoes (Excavators) under 3 cu yd; Travelling Crane (bridge type); Milling Machine; Concrete Paver over 27 E; Concrete Spreader and Distributor; Concrete Laser Screed; Concrete Grinder and Planing Machine; Slipform Curb and Gutter Machine; Boring Machine (Directional); Dredge Operator; Skid Rigs		
GROUP 4: Hydraulic Backhoe (tractor or truck mounted); Hydraulic Crane, 10 tons or less; Tractor, Bulldozer, or End Loader (over 40 hp); Motor Patrol; Scraper Operator; Bituminous Plant and Paver Operator; Screed-Milling Machine; Roller over 5 tons; Concrete and Grout Pumps; Hydro Blaster, 10,000 psi and over; Rotary Drill Operator; Percussion Drilling Machine; Air Track Drill with or without integral hammer; Blaster; Boring Machine (vertical or horizontal); Side Boom; Trencher, wheel type or chain type having 8 inch or larger bucket; Rail Leveling Machine		

(Railroad); Tie Placer; Tie Extractor; Tie Tamper; Stone Leveler; Straddle Carrier; Material Hoists; Stack Hoist; Man Hoists; Mechanic and Welder

GROUP 5: Tractor, Bulldozer, or Endloader (under 40 hp); Tampers -Compactors, riding type; Stump Chipper, large; Roller, Rubber Tire; Backfiller; Trencher, chain type (bucket under 8 inch); Concrete Auto Breaker, large; Concrete Finishing Machine (road type); Concrete Batch Hopper; Concrete Conveyor Systems; Concrete Mixers, 14S or over; Pumps, Screw Type and Gypsum); Hydrohammers, small; Brooms and Sweeprs; Lift Slab Machine; Roller under 5 tons; Industrial Locomotives; Fireman (Pile Drivers and Derricks); Pumps (well points); Hoists, automatic; A-Frames and Winch Trucks; Hoists (tuggers); Boats (Tug, Safety, Work Barges and Launches); Assistant Engineer

GROUP 6: Shouldering Machine Operator; Farm or Industrial Tractor mounted equipment; Post Hole Digger; Auger (vertical and horizontal); Skid Steer Loader with or without attachments; Robotic Tool Carrier with or without attachments; Power Pack Vibratory/Ultra Sound Driver and Extractor; Fireman (Asphalt Plants); Screed Operator; Stone Crushers and Screening Plants; Air, Electric, Hydraulic Jacks (Slip Form); Prestress Machines; Air Compressor, 400 CFM or over; Refrigeration Plant/Freeze Machine; Boiler Operators (temporary heat); Forklifts; Welding Machines; Generators, over or under 150 kw; Compressors, under 400 CFM; Heaters, Mechanical; Combination small equipment operator; Winches, small electric; Oiler; Greaser; Conveyor; Elevator Operator

IRON0383B 06/01/2000		
	Rates	Fringes
IRONWORKERS	23.30	9.86

LABO0140A 06/01/2000		
	Rates	Fringes
LABORERS:		
General Laborer, Mason Tender, Mortar Mixer, Air Hammer, Jack Hammer, Air Spade Operator	18.64	5.81
Asbestos Abatement/Removal Worker [Preparation, Removal and Encapsulation of Hazardous Materials from Non-Mechanical Systems]	17.98	5.81

LABO0464H 06/01/2000		
	Rates	Fringes
LANDSCAPERS	12.28	4.65

PAIN0259C 06/01/2000		
	Rates	Fringes
CRAWFORD, LA CROSSE, AND VERNON COUNTIES		
PAINTERS:		
Brush	18.40	2.30+5%
Spray, Sandblasting, and work more than 50 ft above ground	19.15	2.30+5%

PAIN0802D 06/01/2000		
	Rates	Fringes
RICHLAND COUNTY		
PAINTERS		
Brush	20.70	5.87
Structural Steel, Spray	21.70	5.87
Drywall Taper	21.00	5.87

PLAS0599F	06/01/2000		
		Rates	Fringes
CEMENT MASONS		20.25	8.50
PLASTERERS		20.75	7.40

PLUM0075K	06/01/2000		
		Rates	Fringes
RICHLAND COUNTY			
PLUMBERS		27.51	6.79

PLUM0434J	06/01/2000		
		Rates	Fringes
CRAWFORD, LA CROSSE, AND VERNON COUNTIES			
PLUMBERS		24.50	7.98

ROOF0011J	06/01/2000		
		Rates	Fringes
RICHLAND COUNTY			
ROOFERS		21.95	5.74

ROOF0096R	05/01/1998		
		Rates	Fringes
LA CROSSE AND VERNON COUNTIES			
ROOFERS		17.25	4.25

ROOF0182D	03/01/1999		
		Rates	Fringes
CRAWFORD COUNTY			
ROOFERS		15.00	4.10

SHEE0018H	06/01/2000		
		Rates	Fringes
SHEET METAL WORKERS		19.23	3%+7.62

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

=====
 Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).

 In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal

process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

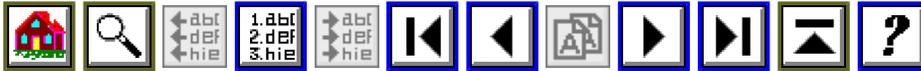
The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

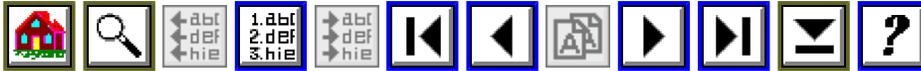
3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION





General Decision Number WI000019

General Decision Number WI000019
 Superseded General Decision No. WI990019
 State: **Wisconsin**

Construction Type:
 HEAVY

County(ies):
 STATEWIDE

HEAVY CONSTRUCTION PROJECTS (Excluding Tunnel, Sewer, and Water Lines), AND HOPPER DREDGE PROJECTS

Modification Number	Publication Date
0	02/11/2000
1	06/02/2000
2	06/30/2000
3	08/18/2000

COUNTY(ies):
 STATEWIDE

BOIL0107A 01/01/2000

	Rates	Fringes
BOILERMAKERS	23.40	10.27
SMALL BOILER REPAIR (Under 25,000 lbs/hour)	18.72	7.20

 * BRWI0000A 06/01/2000

	Rates	Fringes
AREA 1: BAYFIELD, DOUGLAS, PRICE, SAYER, AND WASHBURN COUNTIES CEMENT MASONS	22.45	8.00
AREA 2: ADAMS, ASHLAND, BARRON, BROWN, BUFFALO, BURNETT, CALUMET, CHIPPEWA, CLARK, COLUMBIA, CRAWFORD, DODGE, DOOR, DUNN, EAU CLAIRE, FLORENCE, FOND DU LAC, FOREST, GREEN LAKE, IRON, JACKSON, JEFFERSON, JUNEAU, KEWAUNEE, LA CROSSE, LANGLADE, LINCOLN, MANITOWOC, MARATHON, MARINETTE, MARQUETTE, MENOMINEE, MONROE, OCONTO, ONEIDA, OUTAGAMIE, PEPIN, PIERCE, POLK, PORTAGE, RICHLAND, RUSK, ST CROIX, SAUK, SHAWANO, SHEBOYGAN, TAYLOR, TREMPEALEAU, VERNON , VILAS, WALWORTH, WAUPACA, WAUSHARA, WINNEBAGO, AND WOOD COUNTIES CEMENT MASONS	21.35	6.60
AREA 3: DANE, GRANT, GREEN, IOWA, LAFAYETTE, AND ROCK COUNTIES CEMENT MASONS	21.40	8.05
AREA 4: KENOSHA, MILWAUKEE, OZAUKEE, RACINE, WASHINGTON, AND WAUKESHA COUNTIES CEMENT MASONS	22.05	7.40

 * BRWI0001B 06/01/2000

	Rates	Fringes
CRAWFORD, JACKSON, JUNEAU, LA CROSSE, MONROE, TREMPPEALEAU, AND VERNON COUNTIES BRICKLAYERS	22.69	7.90

 * BRWI0002B 06/01/2000

	Rates	Fringes
ASHLAND, BAYFIELD, DOUGLAS, AND IRON COUNTIES BRICKLAYERS	24.61	7.88

 * BRWI0003B 06/01/2000

	Rates	Fringes

BROWN, DOOR, FLORENCE, KEWAUNEE, MARINETTE, AND OCONTO COUNTIES		
BRICKLAYERS	22.62	7.97

* BRWI0004B	06/01/2000	
	Rates	Fringes
KENOSHA, RACINE, AND WALWORTH COUNTIES		
BRICKLAYERS	25.56	8.05

* BRWI0006B	06/01/2000	
	Rates	Fringes
ADAMS, CLARK, FOREST, LANGLADE, LINCOLN, MARATHON, MENOMINEE, ONEIDA, PORTAGE, PRICE, TAYLOR, VILAS AND WOOD COUNTIES		
BRICKLAYERS	22.94	7.65

* BRWI0007B	06/01/2000	
	Rates	Fringes
GREEN, LAFAYETTE, AND ROCK COUNTIES		
BRICKLAYERS	24.29	7.90

* BRWI0008B	06/01/2000	
	Rates	Fringes
MILWAUKEE, OZAUKEE, WASHINGTON, AND WAUKESHA COUNTIES		
BRICKLAYERS	27.13	7.05

* BRWI0009B	06/01/2000	
	Rates	Fringes
GREEN LAKE, MARQUETTE, OUTAGAMIE, SHAWANO, WAUPACA, WASHARA, AND WINNEBAGO COUNTIES		
BRICKLAYERS	22.62	7.97

* BRWI0011C	06/01/2000	
	Rates	Fringes
CALUMET, FOND DU LAC, MANITOWOC, AND SHEBOYGAN COUNTIES		
BRICKLAYERS	22.62	7.97

* BRWI0013B	06/01/2000	
	Rates	Fringes
DANE, GRANT, IOWA, AND RICHLAND COUNTIES		
BRICKLAYERS	24.08	8.20

* BRWI0019B	06/01/2000	
	Rates	Fringes
BARRON, BUFFALO, BURNETT, CHIPPEWA, DUNN, EAU CLAIRE, PEPIN, PIERCE, POLK, RUSK, ST. CROIX, SAWYER AND WASHBURN COUNTIES		
BRICKLAYERS	23.04	7.55

* BRWI0021B	06/01/2000	
	Rates	Fringes
DODGE AND JEFFERSON COUNTIES		
BRICKLAYERS	24.32	7.85

* BRWI0034B	06/01/2000	
	Rates	Fringes
COLUMBIA AND SAUK COUNTIES		
BRICKLAYERS	24.48	7.80

CARP0087A	05/01/1999	
	Rates	Fringes
BURNETT (W. of Hwy 48), PIERCE (W. of Hwy 29), POLK (W. of Hwys 35, 48 & 65), AND ST. CROIX (W. of Hwy 65) COUNTIES		
CARPENTERS & PILEDRIVER MEN	23.15	8.46

CARP0161D	06/01/1999	
	Rates	Fringes

KENOSHA COUNTY		
CARPENTERS	22.31	7.66

CARP0161E 06/01/1999		
	Rates	Fringes
RACINE COUNTY		
CARPENTERS	22.81	7.16

CARP0252B 06/01/2000		
	Rates	Fringes
ADAMS, ASHLAND, BARRON, BAYFIELD (Eastern 2/3), BROWN, BUFFALO, BURNETT (E. of Hwy 48), CALUMET, CHIPPEWA, CLARK, DOOR, DUNN, EAU CLAIRE, FLORENCE (except area bordering Michigan State Line), FOND DU LAC, FOREST, GREEN LAKE, IRON, JACKSON, JUNEAU, KEWAUNEE, LA CROSSE, LANGLADE, LINCOLN, MANITOWOC, MARATHON, MARINETTE (except N.E. corner), MARQUETTE, MENOMINEE, MONROE, OCONTO, ONEIDA, OUTAGAMIE, PEPIN, PIERCE (E. of Hwys 29 & 65), POLK (E. of Hwys 35, 48 & 65), PORTAGE, PRICE, RUSK, SAWYER, SHAWANO, SHEBOYGAN, ST CROIX (E. of Hwy 65), TAYLOR, TREMPLEALEAU, VERNON , VILAS, WASHBURN		
CARPENTERS	22.11	6.93
MILLWRIGHTS	23.66	6.93
PILEDRIVERMEN	22.61	6.93
FLORENCE COUNTY (Area bordering Michigan State Line), and MARINETTE COUNTY (Northeast part)		
CARPENTERS	19.41	4.45
MILLWRIGHTS	21.09	5.12
PILEDRIVER MEN	19.41	4.45

* CARP0264B 06/01/2000		
	Rates	Fringes
COLUMBIA, CRAWFORD, DANE, DODGE, GRANT, GREEN, IOWA, JEFFERSON, LAFAYETTE, RICHLAND, ROCK, SAUK, AND WALWORTH COUNTIES		
CARPENTERS	21.96	7.12
MILLWRIGHTS	23.61	7.12
PILEDRIVERS	22.46	7.12

CARP0264C 06/01/2000		
	Rates	Fringes
MILWAUKEE, OZAUKEE, WAUKESHA, AND WASHINGTON COUNTIES		
CARPENTERS	24.85	7.73

CARP0361D 05/01/2000		
	Rates	Fringes
BAYFIELD (Western 1/3) AND DOUGLAS COUNTIES		
CARPENTERS & PILEDRIVERMEN	21.09	8.98

CARP2337A 06/01/1999		
	Rates	Fringes
MILWAUKEE, OZAUKEE, WAUKESHA AND WASHINGTON COUNTIES		
PILEDRIVER MEN	24.34	10.03
KENOSHA COUNTY		
PILEDRIVER MEN	21.56	8.68
RACINE COUNTY (East of Hwy 75)		
PILEDRIVER MEN	21.86	8.28
JEFFERSON (South of I-94), RACINE (West of Hwy 75), AND WALWORTH COUNTIES		
PILEDRIVER MEN	22.91	7.38
DODGE AND JEFFERSON (North of I-94) COUNTIES		
PILEDRIVER MEN	22.91	7.38

CARP2337C 06/01/2000		
	Rates	Fringes
MILWAUKEE, OZAUKEE, WAUKESHA AND WASHINGTON COUNTIES		
MILLWRIGHTS	22.57	10.13

KENOSHA COUNTY		
MILLWRIGHTS	22.27	9.18
RACINE COUNTY (Area East of Hwy 75)		
MILLWRIGHTS	22.17	9.18
JEFFERSON (South of I-94), RACINE (Area West of Hwy 75), AND		
WALWORTH COUNTIES		
MILLWRIGHTS	23.07	8.43
DODGE AND JEFFERSON (North of I-94) COUNTIES		
MILLWRIGHTS	23.12	8.18

ELEC0014B 06/01/2000

	Rates	Fringes
ASHLAND, BARRON, BAYFIELD, BUFFALO, BURNETT, CHIPPEWA, CLARK (except Maryville, Colby, Unity, Sherman, Fremont, Lynn & Sherwood), CRAWFORD, DUNN, EAU CLAIRE, GRANT, IRON, JACKSON, LA CROSSE, MONROE, PEPIN, PIERCE, POLK, PRICE, RICHLAND, RUSK, ST CROIX, SAWYER, TAYLOR, TREMPPEALEAU, VERNON , AND WASHBURN COUNTIES		
ELECTRICIANS	22.80	27.5%+2.94

ELEC0127B 06/01/2000

	Rates	Fringes
KENOSHA COUNTY		
ELECTRICIANS	26.71	23.5%+3.00

ELEC0158B 06/01/2000

	Rates	Fringes
BROWN, DOOR, KEWAUNEE, MANITOWOC (except Schleswig), MARINETTE (Wausaukee and area South thereof), OCONTO, MENOMINEE (East of a line 6 miles West of the West boundary of Oconto County), SHAWANO (Except Area North of Townships of Aniwa and Hutchins) COUNTIES		
ELECTRICIANS	23.62	22.75%+2.96

ELEC0159D 06/01/2000

	Rates	Fringes
COLUMBIA, DANE, DODGE (Area West of Hwy 26, except Chester and Emmet Townships), GREEN, LAKE (except Townships of Berlin, Seneca, and St. Marie), IOWA, MARQUETTE (except Townships of Neshkoka, Crystal Lake, Newton, and Springfield), and SAUK COUNTIES		
ELECTRICIANS	25.11	9.41

ELEC0219D 06/01/2000

	Rates	Fringes
FLORENCE COUNTY (Townships of Aurora, Commonwealth, Fern, Florence and Homestead) AND MARINETTE COUNTY (Township of Niagara)		
ELECTRICIANS:		
Electrical contracts under \$90,000	20.46	7.11
Electrical contracts over \$90,000	23.86	10.22

ELEC0242E 06/01/2000

	Rates	Fringes
DOUGLAS COUNTY		
ELECTRICIANS	27.76	33%

ELEC0388B 06/01/2000

	Rates	Fringes
ADAMS, CLARK (Colby, Fremont, Lynn, Mayville, Sherman, Sherwood, Unity), FOREST, JUNEAU, LANGLADE, LINCOLN, MARATHON, MARINETTE (Area North of the town of Wausaukee), MENOMINEE (Area West of a line 6 miles West of the West boundary of Oconto County), ONEIDA, PORTAGE, SHAWANO (Area North of the townships of Aniwa and		

Hutchins), VILAS AND WOOD COUNTIES

ELECTRICIANS	23.30	8.51
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ELEC0430B 06/01/2000

	Rates	Fringes
RACINE COUNTY (Except Burlington Township)		
ELECTRICIANS	26.09	26.5%+3.00

ELEC0494E 06/01/2000

	Rates	Fringes
MILWAUKEE, OZAUKEE, WASHINGTON, AND WAUKESHA COUNTIES		
ELECTRICIANS	25.29	11.67

ELEC0494F 06/01/2000

	Rates	Fringes
CALUMET (Township of New Holstein), FOND DU LAC, MANITOWOC (Schleswig), and SHEBOYGAN COUNTIES		
ELECTRICIANS	22.84	11.26

ELEC0577C 06/01/2000

	Rates	Fringes
CALUMET (except Township of New Holstein), GREEN LAKE (N. part including Townships of Berlin, St Marie, and Seneca), MARQUETTE (N. part including Townships of Crystal Lake, Neshkoro, Newton, and Springfield), OUTAGAMIE, WAUPACA, WAUSHARA, AND WINNEBAGO COUNTIES		
ELECTRICIANS	23.67	23.3%+3.00

ELEC0890C 06/01/2000

	Rates	Fringes
DODGE (Emmet Township only), GREEN, JEFFERSON, LAFAYETTE, RACINE (Burlington Township), ROCK AND WALWORTH COUNTIES		
ELECTRICIANS	25.43	20.55%+2.75

ELEC0953B 06/01/1999

	Rates	Fringes
LINE CONSTRUCTION:		
Lineman	24.25	2.00+23.25%
Heavy Equipment Operator	21.83	2.00+23.25%
Light Equipment Operator	19.40	2.00+23.25%
Heavy Groundman Driver	16.98	2.00+23.25%
Light Groundman Driver	15.76	2.00+23.25%
Groundman	13.34	2.00+23.25%

ENGI0139E 06/01/2000

	Rates	Fringes
POWER EQUIPMENT OPERATORS:		
GROUP 1	25.67	10.00
GROUP 2	25.17	10.00
GROUP 3	24.67	10.00
GROUP 4	24.41	10.00
GROUP 5	24.12	10.00
GROUP 6	23.91	10.00

POWER EQUIPMENT OPERATORS CLASSIFICATIONS
GROUP 1: Cranes, tower cranes, and derricks with or without attachments with a lifting capacity of over 100 tons; or cranes, tower cranes, and derricks with boom, leads and/or jib lengths measuring 176 feet or longer.
GROUP 2: Cranes, tower cranes and derricks with or without attachments with a lifting capacity of 100 tons or less; or cranes, tower cranes, and derricks with boom, leads, and/or jibs lengths measuring 175 feet or under and backhoes (excavators) having a manufacturers rated capacity of 3 cubic yards and over; caisson rigs; pile driver; dredge operator; dredge engineer

GROUP 3: Mechanic or welder - Heavy duty equipment; cranes with a lifting capacity of 25 tons or under; concrete breaker (manual or remote); vibratory/sonic concrete breaker; concrete laser screed; concrete slipform paver; concrete batch plant operator; concrete pvt. spreader - heavy duty (rubber tired); concrete spreader & distributor; automatic subgrader (concrete); concrete grinder & planing machine; concrete slipform curb & gutter machine; slipform concrete placer; tube finisher; hydro blaster (10,000 psi & over); bridge paver; concrete conveyor system; concrete pump; stabilizing mixer (self-propelled); shoulder widener; asphalt plant engineer; bituminous paver; bump cutter & grooving machine; milling machine; screed (bituminous paver); asphalt heater, planer & scarifier; backhoes (excavators) having a manufacturer's rated capacity of under 3 cu yds; grader or motor patrol; tractor (scraper, dozer, pusher, loader); scraper - rubber tired (single or twin engine); endloader; hydraulic backhoe (tractor type); trenching machine; skid rigs; tractor, side boom (heavy); drilling or boring machine (mechanical heavy); roller over 5 tons; percussion or rotary drilling machine; air track; blaster; loading machine (conveyor); tugger; boatmen; winches & A-frames; post driver; material hoist

GROUP 4: Greaser, roller steel (5 tons or less); roller (pneumatic tired) - self propelled; tractor (mounted or towed compactors & light equipment); shouldering machine; self-propelled chip spreader; concrete spreader; finishing machine; mechanical float; curing machine; power subgrader; joint sawer (multiple blade) belting machine; burlap machine; texturing machine; tractor endloader (rubber tired) - light; jeep digger; forklift; mulcher; launch operator; fireman, environmental burner

GROUP 5: Air compressor; power pack; vibrator hammer and extractor; heavy equipment, leadman; tank car heaters; stump chipper; curb machine operator; proportioning plants; generators; mudjack operator; rock breaker; crusher or screening plant; screed (milling machine); automatic belt conveyor and surge bin; pug mill operator

GROUP 6: Oiler; pump (over 3 inches)

 ENGI0139I 06/01/2000

	Rates	Fringes
STATEWIDE EXCEPT KENOSHA, MILWAUKEE, OZAUKEE, RACINE, WASHINGTON, AND WAUKESHA COUNTIES		
POWER EQUIPMENT OPERATORS (LOCK AND DAM WORK):		
GROUP 1	25.57	10.00
GROUP 2	25.07	10.00
GROUP 3	24.57	10.00
GROUP 4	24.04	10.00
GROUP 5	21.97	10.00
GROUP 6	21.34	10.00

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Cranes, Tower Cranes and Derricks with or without attachments with a lifting capacity of over 100 tons; Cranes, Tower Cranes, and Derricks with boom, leads and/or jib lengths 176 ft or longer.

GROUP 2: Backhoes (Excavators) having a manufacturer's rated capacity of 3 cu yd and over; Cranes, Tower Cranes and Derricks with or without attachments with a lifting capacity of 100 tons or less; Cranes, Tower Cranes, and Derricks with boom, leads, and/or jib lengths 175 ft or less; Caisson Rigs; Pile Driver

GROUP 3: Backhoes (Excavators) under 3 cu yd; Travelling Crane (bridge type); Milling Machine; Concrete Paver over 27 E; Concrete Spreader and Distributor; Concrete Laser Screed; Concrete Grinder and Planing Machine; Slipform Curb and Gutter Machine; Boring Machine (Directional); Dredge Operator; Skid Rigs

GROUP 4: Hydraulic Backhoe (tractor or truck mounted); Hydraulic

Crane, 10 tons or less; Tractor, Bulldozer, or End Loader (over 40 hp); Motor Patrol; Scraper Operator; Bituminous Plant and Paver Operator; Screed-Milling Machine; Roller over 5 tons; Concrete and Grout Pumps; Hydro Blaster, 10,000 psi and over; Rotary Drill Operator; Percussion Drilling Machine; Air Track Drill with or without integral hammer; Blaster; Boring Machine (vertical or horizontal); Side Boom; Trencher, wheel type or chain type having 8 inch or larger bucket; Rail Leveling Machine (Railroad); Tie Placer; Tie Extractor; Tie Tamper; Stone Leveler; Straddle Carrier; Material Hoists; Stack Hoist; Man Hoists; Mechanic and Welder

GROUP 5: Tractor, Bulldozer, or End Loader (over 40 hp); Tampers -Compactors, riding type; Stump Chipper, large; Roller, Rubber Tire; Backfiller; Trencher, chain type (bucket under 8 inch); Concrete Auto Breaker, large; Concrete Finishing Machine (road type); Concrete Batch Hopper; Concrete Conveyor Systems; Concrete Mixers, 14S or over; Pumps, Screw Type and Gypsum); Hydrohammers, small; Brooms and Sweepers; Lift Slab Machine; Roller under 5 tons; Industrial Locomotives; Fireman (Pile Drivers and Derricks); Pumps (well points); Hoists, automatic; A-Frames and Winch Trucks; Hoists (tuggers); Boats (Tug, Safety, Work Barges and Launches); Assistant Engineer

GROUP 6: Shouldering Machine Operator; Farm or Industrial Tractor mounted equipment; Post Hole Digger; Auger (vertical and horizontal); Skid Steer Loader with or without attachments; Robotic Tool Carrier with or without attachments; Power Pack Vibratory/Ultra Sound Driver and Extractor; Fireman (Asphalt Plants); Screed Operator; Stone Crushers and Screening Plants; Air, Electric, Hydraulic Jacks (Slip Form); Prestress Machines; Air Compressor, 400 CFM or over; Refrigeration Plant/Freeze Machine; Boiler Operators (temporary heat) Forklifts; Welding Machines; Generators, over or under 150 kw; Compressors, under 400 CFM; Heaters, Mechanical; Combination small equipment operator; Winches, small electric; Oiler; Greaser; Conveyor; Elevator Operator

 IRON0008B 06/01/2000

	Rates	Fringes
BROWN, CALUMET, DOOR, FOND DU LAC, KEWAUNEE, MANITOWOC, MARINETTE, OCONTO, OUTAGAMI, SHAWANO, SHEBOYGAN, AND WINNEBAGO COUNTIES:		
IRONWORKERS	23.16	10.48

 IRON0008D 06/01/2000

	Rates	Fringes
KENOSHA, MILWAUKEE, OZAUKEE, RACINE, WALWORTH (N.E. 2/3), WASHINGTON, AND WAUKESHA COUNTIES		
IRONWORKERS	24.97	10.48

 IRON0383A 06/01/2000

	Rates	Fringes
ADAMS, COLUMBIA, CRAWFORD, DANE, DODGE, FLORENCE, FOREST, GRANT, GREENE, (EXCLUDING S.E. TIP), GREEN LAKE, IOWA, JEFFERSON, JUNEAU, LA CROSSE, LAFAYETTE, LANGLADE, MARATHON, MARQUETTE, MENOMINEE, MONROE, PORTAGE, RICHLAND, ROCK (Northern area, vicinity of Edgerton and Milton), SAUK, VERNON , WAUPACA, WAUSHARA, AND WOOD COUNTIES:		
IRONWORKERS	23.30	9.86

 IRON0498E 06/01/2000

	Rates	Fringes
GREEN (S.E. 1/3), ROCK (South of Edgerton and Milton), and WALWORTH (S.W. 2/3) COUNTIES:		
IRONWORKERS	27.00	13.475

IRON0512H 05/01/2000

	Rates	Fringes
BARRON, BUFFALO, CHIPPEWA, CLARK, DUNN, EAU CLAIRE, JACKSON, PEPIN, PIERCE, POLK, RUSK (S.W. half), ST CROIX, TAYLOR, AND TREMPEALEAU COUNTIES		
IRONWORKERS	27.15	9.94

IRON0563D 05/01/2000

	Rates	Fringes
ASHLAND, BAYFIELD, BURNETT, DOUGLAS, IRON, LINCOLN (E. 1/4), ONEIDA, PRICE, RUSK (N.E. half), SAWYER, VILAS AND WASHBURN COUNTIES		
IRONWORKERS	22.13	11.35

LABO0113B 06/01/2000

	Rates	Fringes
MILWAUKEE AND WAUKESHA COUNTIES		
LABORERS:		
GROUP 1	18.60	8.04
GROUP 2	18.75	8.04
GROUP 3	18.95	8.04
GROUP 4	19.10	8.04
GROUP 5	19.25	8.04
GROUP 6	20.61	8.04
GROUP 7	21.06	8.04
GROUP 8	21.83	8.04
GROUP 9	15.09	8.04

LABORERS CLASSIFICATIONS

GROUP 1: General Laborer; Tree Trimmer; Conduit Layer; Demolition
and Wrecking Laborer; Guard Rail, Fence, and Bridge Builder;
Landscaper; Multiplate Culvert Assembler; Stone Handler;
Bituminous Worker (Shoveler, Loader, and Utility Man); Batch
Truck Dumper or Cement Handler; Bituminous Worker (Dumper,
Ironer, Smoother, and Tamper); Concrete Handler
GROUP 2: Air Tool Operator; Joint Sawyer and Filler (Pavement);
Vibrator or Tamper Operator (Mechanical Hand Operated); Chain Saw
Operator; Demolition Burning Torch Laborer
GROUP 3: Bituminous Worker (Raker and Luteman); Formsetter
(Curb, Sidewalk, and Pavement); Strike Off Man
GROUP 4: Line and Grade Specialist
GROUP 5: Blaster and Powderman
GROUP 6: Topman (Sewer and Water)
GROUP 7: Bottomman (Sewer and Water)
GROUP 8: Pipelayer (Sewer and Water)
GROUP 9: Flagperson; traffic control person

LABO0113C 06/01/2000

	Rates	Fringes
OZAUKEE AND WASHINGTON COUNTIES		
LABORERS:		
GROUP 1	17.85	8.04
GROUP 2	17.95	8.04
GROUP 3	18.00	8.04
GROUP 4	18.20	8.04
GROUP 5	18.05	8.04
GROUP 6	20.64	8.04
GROUP 7	21.06	8.04
GROUP 8	21.83	8.04
GROUP 9	14.94	8.04

LABORERS CLASSIFICATIONS

GROUP 1: General Laborer; Tree Trimmer; Conduit Layer;
Demolition and Wrecking Laborer; Guard Rail, Fence, and Bridge
Builder; Landscaper; Multiplate Culvert Assembler; Stone Handler;

Bituminous Worker (Shoveler, Loader, and Utility Man); Batch Truck Dumper or Cement Handler; Bituminous Worker (Dumper, Ironer, Smoother, and Tamper); Concrete Handler
 GROUP 2: Air Tool Operator; Joint Sawyer and Filler (Pavement); Vibrator or Tamper Operator (Mechanical Hand Operated);
 GROUP 3: Bituminous Worker (Raker and Luteman); Formsetter (Curb, Sidewalk, and Pavement); Strike Off Man
 GROUP 4: Line and Grade Specialist
 GROUP 5: Blaster; powderman
 GROUP 6: Topman (Sewer and Water)
 GROUP 7: Bottom Man (Sewer and Water)
 GROUP 8: Pipelayer (sewer & water)
 GROUP 9: Flagperson and Traffic Control Person

 LABO0140C 06/01/2000

Rates Fringes
 BUFFALO, CRAWFORD, GRANT, JACKSON, JUNEAU, LA CROSSE, MONROE,
 RICHLAND, TREMPLEAU, AND **VERNON** COUNTIES

LABORERS:

GROUP 1	18.64	5.81
GROUP 2	19.09	5.81

LABORERS CLASSIFICATIONS

GROUP 1: General laborer; caisson top man; cement and concrete workers; handling of precast concrete decking products; terrazzo and tile laborers; wreckers; railroad work; power buggy; powered sweepers; form strippers; form oiler; form cleaner; concrete dump men; pit man; signal man; scaffold builder; hod carrier; torch man; concrete saw; mud jack; air drill; fork lift operator; flagman and water boy Jack hammer; air spade; roofing laborer; mortar and plaster mixers; plaster and concrete pump; nozzle man; gunnite man; creosote workers
 Swing or stage scaffold on chimney and tower Drill operators
 tunnel and caisson
 GROUP 2: Pipelayers

 LABO0237C 06/01/2000

Rates Fringes
 KENOSHA AND RACINE COUNTIES

LABORERS:

GROUP 1	20.16	7.16
GROUP 2	20.31	7.16

LABORERS CLASSIFICATIONS

GROUP 1: Tending to carpenters; stripping of forms; cleaning lumber; oiling lumber and forms; pouring, puddling and spreading of concrete; laying and pulling wire mesh; excavating for buildings; cleaning of debris; handling of rods or steel for reinforcement; shoring and moving of buildings; operating vibrators, air spades, and all other pneumatic or electric tools; mechanical concrete buggies; prime buggies; forklifts; concrete pump nozzle man; jack hammer; concrete buster and caisson workers, and on work where both employees are needed to operate same; waterman; and flagman
 GROUP 2: Tending to and mixing all materials for brick, stone masons, marble and tile setters; building scaffolds; cleaning floors, windows, pipes and tile; plasterer laborer; tending to and mixing all materials for plasterers; drying of plaster when done by salamander heat; building scaffolds and cleaning up after the plasterers; wrecking of buildings of more than one story or where the work is considered hazardous; torch burner; demolition man

 LABO0317B 06/01/2000

Rates Fringes
 BARRON, CHIPPEWA, CLARK (Western half), DUNN, EAU CLAIRE, PEPIN

PIERCE, POLK, RUSK, ST. CROIX, AND TAYLOR (Western half)

LABORERS:

GROUP 1	18.37	6.01
GROUP 2	18.42	6.01

LABORERS CLASSIFICATIONS

GROUP 1: General laborer; vibrator operator; gunniteman; nozzleman; scaffold builder; wrecking; blaster tender; mesh mucker; terrazzo laborer; flagman; plaster tender, sandblaster; jackhammer; paving breaker; chipping hammer
GROUP 2: Mason tender

LABO0464D 06/01/2000

Rates Fringes

COLUMBIA, DANE, IOWA, JEFFERSON (Northern half), SAUK AND WALWORTH COUNTIES

LABORERS:

GROUP 1	18.44	6.01
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LABORERS CLASSIFICATIONS

GROUP 1: General Laborer; Asbestos Laborer; Hod Carrier; Mortar Mixer, Hazardous Waste and Landfill workers

LABO0539B 06/01/2000

Rates Fringes

ADAMS, BROWN, CALUMET, CLARK (Eastern half), DODGE, DOOR, FLORENCE, FOND DU LAC, FOREST, GREEN LAKE, KEWAUNEE, LANGLADE LINCOLN, MANITOWOC, MARATHON, MARINETTE (excluding Niagara), MARQUETTE, MENOMINEE, OCONTO, ONEIDA, OUTAGAMIE, PORTAGE, PRICE SHAWANO, SHEBOYGAN, TAYLOR (Eastern half), VILAS, WAUPACA, WAUSHARA, WINNEBAGO, AND WOOD COUNTIES

LABORERS:

GROUP 1	17.71	6.01
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LABORERS CLASSIFICATIONS

GROUP 1: Construction laborer; form stripper, form oiler form cleaner; dump men; pit men; building wrecker; plumber's laborer; motorized buggy operator; concrete laborer; air spade and chipping hammer; drag tender and signal man; concrete pumps and nozzleman; bituminous worker; mesh mucker; skid loader; materials mover; plaster tender; hod carrier; dry cement handler; kettlemen; vibrator operator; tile setter tender; core drill operator; burner on wrecking; air operator; sheeting driver; power tamper; creosote worker; mudjack operator; bituminous raker and luteman; chipping hammer on tank line; mason tender; mortar and plaster mixer; jackhammer operator; gunnite man; concrete breaker; jumping jack; terrazzo grinder; forklift operator; bobcat operator; precast erector; caisson bottom man; work on swinging scaffold; all high work including construction demolition in excess of 30 ft on free standing industrial chimneys and tower, tanks; skip form work and grain elevators; asbestos demolition laborer flagman

LABO1050A 06/01/2000

Rates Fringes

BAYFIELD, BURNETT, DOUGLAS, IRON, SAWYER, AND WASHBURN COUNTIES

LABORERS:

GROUP 1	18.78	6.31
GROUP 2	19.03	6.31
GROUP 3	19.13	6.31
GROUP 4	19.23	6.31
GROUP 5	19.33	6.31

LABORERS CLASSIFICATIONS

GROUP 1: General laborer; concrete work; mason tender; tile setter & terrazzo tenders; demolition and wrecking; roofing tender; underpinning, lagging, bracing, shoring; jack man

on slip form; vibrator; landscaping; bituminous worker;
 asbestos removal laborer; hazardous waste worker; hydro-
 blaster;
 GROUP 2: Buffing machine operator; raker; luteman
 GROUP 3: Cement manhole builder; plaster laborer; steel
 burners; steel form setter; jack hammer; air tools
 GROUP 4: Miners tunnels; underground sewers; drilling, blasting
 and all compressed air work underground or in compression
 chambers
 GROUP 5: Dynamite person

 LAB01050B 06/01/2000

	Rates	Fringes
ASHLAND COUNTY		
LABORERS:		
GROUP 1	17.33	6.21
GROUP 2	17.58	6.21
GROUP 3	17.68	6.21
GROUP 4	17.78	6.21
GROUP 5	17.88	6.21

LABORERS CLASSIFICATIONS

GROUP 1: General laborer; concrete work; mason tender; tile
 setter & terrazzo tenders; demolition and wrecking; roofing
 tender; underpinning, lagging, bracing, shoring; jack man
 on slip form; vibrator; landscaping; bituminous worker;
 asbestos removal laborer; hazardous waste worker; hydro-
 blaster;
 GROUP 2: Buffing machine operator; raker; luteman
 GROUP 3: Cement manhole builder; plaster laborer; steel
 burners; steel form setter; jack hammer; air tools
 GROUP 4: Miners tunnels; underground sewers; drilling, blasting
 and all compressed air work underground or in compression
 chambers
 GROUP 5: Dynamite person

 LAB01440B 06/01/2000

	Rates	Fringes
GREEN, JEFFERSON (Southern part), LAFAYETTE, AND ROCK COUNTIES		
LABORERS:		
GROUP 1	18.42	6.01

LABORERS CLASSIFICATIONS

GROUP 1: General Laborer, Flagman Power Rammer; Jumping jack;
 Vibrator Operator; Fork Lift Operator; Concrete Pump Lead
 Hose Man; Mortar and Plaster Mixer; Air Hammer

 PAIN0106H 05/01/2000

	Rates	Fringes
ASHLAND, BAYFIELD, BURNETT, AND DOUGLAS COUNTIES		
PAINTERS:		
REPAINT:		
Brush, Roller	20.68	7.08
Spray, Sandblast, Steel	21.28	7.08
NEW:		
Brush, Roller	22.18	7.08
Spray, Sandblast, Steel	22.78	7.08

 * PAIN0108B 06/01/2000

	Rates	Fringes
RACINE COUNTY		
PAINTERS:		
Brush, Roller	20.50	7.40
Spray & Sandblast	21.50	7.40

 PAIN0145D 06/01/1999

	Rates	Fringes
CALUMET, FOND DU LAC, GREEN LAKE, MANITOWOC, MARQUETTE, OUTAGAMIE, SHAWANO (West of Shawano), SHEBOYGAN, WAUSHARA, WAUPACA, AND WINNEBAGO COUNTIES		
PAINTERS:		
Brush	16.21	3.01
Spray	16.71	3.01

PAIN0259B	06/01/2000	
	Rates	Fringes
BARRON, BUFFALO, CHIPPEWA, CRAWFORD, DUNN, EAU CLAIRE, JACKSON, LA CROSSE, MONROE, PEPIN, PIERCE, POLK, RUSK, ST CROIX, SAWYER, TREMPEALEAU, VERNON , AND WASHBURN COUNTIES		
PAINTERS:		
Brush	18.40	2.30+5%
Spray, Sandblasting, and work more than 50 ft above ground	19.15	2.30+5%

PAIN0337B	06/01/1999	
	Rates	Fringes
BROWN, DOOR, KEWAUNEE, OCONTO, AND SHAWANO (East of the Town of Shawano) COUNTIES		
PAINTERS:		
Brush	17.45	4.10
Spray & Industrial	17.83	4.10

PAIN0781B	06/01/2000	
	Rates	Fringes
JEFFERSON, MILWAUKEE, OZAUKEE, WASHINGTON, AND WAUKESHA COUNTIES		
PAINTERS:		
Brush	22.64	7.37
Spray & Sandblast	23.39	7.37
Bridge	22.99	7.37

PAIN0802B	06/01/2000	
	Rates	Fringes
COLUMBIA, DANE, DODGE, GRANT, GREEN, IOWA, LAFAYETTE, RICHLAND, ROCK, AND SAUK COUNTIES		
PAINTERS:		
Brush	20.70	5.87
Structural Steel, Spray	21.70	5.87

* PAIN0832B	06/01/2000	
	Rates	Fringes
ADAMS, CLARK, FOREST, IRON, JUNEAU, LANGLADE, LINCOLN, MARATHON, MENOMINEE, ONEIDA, PORTAGE, PRICE, WOOD, AND VILAS COUNTIES		
PAINTERS	20.20	4.06

PAIN0934A	06/01/2000	
	Rates	Fringes
KENOSHA AND WALWORTH COUNTIES		
PAINTERS:		
Brush	20.88	6.56
Structural Steel	21.03	6.56
Spray	21.63	6.56

* PAIN1011C	06/01/2000	
	Rates	Fringes
FLORENCE COUNTY		
PAINTERS	19.10	3.55

PLUM0011C	05/01/2000	
	Rates	Fringes

ASHLAND, BAYFIELD, BURNETT, DOUGLAS, IRON, SAWYER, AND WASHBURN
COUNTIES

PLUMBERS	24.40	9.65
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PLUM0075B 06/01/2000

	Rates	Fringes
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0 MILWAUKEE, OZAUKEE, WASHINGTON, AND WAUKESHA COUNTIES

1

2 PLUMBERS	27.51	6.79
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3

4

5 PLUM0075D 06/01/2000

	Rates	Fringes
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7 DODGE (Watertown), GREEN, JEFFERSON, LAFAYETTE, AND ROCK COUNTIES

8

9 PLUMBERS & PIPEFITTERS	27.76	6.79
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0

1

2 PLUM0075I 06/01/2000

	Rates	Fringes
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4 COLUMBIA, DANE, IOWA, MARQUETTE, RICHLAND AND SAUK COUNTIES

5

6 PLUMBERS	27.51	6.79
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7

8

9 PLUM0118B 06/01/2000

	Rates	Fringes
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1 KENOSHA, RACINE, AND WALWORTH COUNTIES

2

3 PLUMBERS AND STEAMFITTERS	26.11	8.81
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4

5

6 * PLUM0400C 06/01/2000

	Rates	Fringes
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8 ADAMS, BROWN, CALUMET, DODGE (except Watertown), DOOR, FOND DU

9 LAC, GREEN LAKE, KEWAUNEE, MANITOWOC, MARINETTE (except

0 Niagara), MENOMINEE, OCONTO, OUTAGAMIE, SHAWANO, SHEBOYGAN,

1 WAUPACA, WAUSHARA, AND WINNEBAGO

2 COUNTIES

3

4 PLUMBERS & PIPEFITTERS	24.75	7.66
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5

6

7 PLUM0434B 06/01/2000

	Rates	Fringes
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9 BARON, BUFFALO, CHIPPEWA, CLARK, CRAWFORD, DUNN, EAU CLAIRE,

0 FLORENCE, FOREST, GRANT, JACKSON, JUNEAU, LA CROSSE, LANGLADE,

1 LINCOLN, MARATHON, MONROE, ONEIDA, PEPIN, PIERCE, POLK, PORTAGE,

2 PRICE, RUSK, ST. CROIX, TAYLOR, TREMPLEAU, **VERNON**, VILAS, AND

3 WOOD COUNTIES

4

5 PLUMBERS & PIPEFITTERS	24.50	7.98
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6

7

8 PLUM0506G 06/01/2000

	Rates	Fringes
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0 MARINETTE COUNTY (Niagara only)

1

2 PLUMBERS & PIPEFITTERS:

3 Jobs where plumbing bid is

4 \$50,000 or less	17.48	10.00
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5 All other work	24.03	10.00
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6

7

8 TEAM0039B 05/01/2000

	Rates	Fringes
0 TRUCK DRIVERS:		
1 2 Axle Trucks	17.83	8.03
2 3 or more axles; Euclids		
3 or Dumptor	17.98	8.03

6 WELL DRILLERS	16.52	3.70
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1 SELF-PROPELLED HOPPER DREDGES:

3 DRAG TENDER	8.78	4.23+A
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5 FOOTNOTE FOR DRAG TENDERS:

6 A. PAID HOLIDAYS: New Year's Day, Washington's Birthday,
7 Memorial Day, Independence Day, Labor Day, Paul Hall's
8 Birthday (August 20), Veteran's Day, Thanksgiving Day,
9 and Christmas Day

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

6 Unlisted classifications needed for work not included within
7 the scope of the classifications listed may be added after
8 award only as provided in the labor standards contract clauses
9 (29 CFR 5.5(a)(1)(v)).

1 In the listing above, the "SU" designation means that rates
2 listed under that identifier do not reflect collectively
3 bargained wage and fringe benefit rates. Other designations
4 indicate unions whose rates have been determined to be
5 prevailing.

7 WAGE DETERMINATION APPEALS PROCESS

9 1.) Has there been an initial decision in the matter? This can
0 be:

- 2 * an existing published wage determination
- 3 * a survey underlying a wage determination
- 4 * a Wage and Hour Division letter setting forth a
- 5 position on a wage determination matter
- 6 * a conformance (additional classification and rate)
- 7 ruling

9 On survey related matters, initial contact, including requests
0 for summaries of surveys, should be with the Wage and Hour
1 Regional Office for the area in which the survey was conducted
2 because those Regional Offices have responsibility for the
3 Davis-Bacon survey program. If the response from this initial
4 contact is not satisfactory, then the process described in 2.)
5 and 3.) should be followed.

8 With regard to any other matter not yet ripe for the formal
9 process described here, initial contact should be with the Branch
0 of Construction Wage Determinations. Write to:

2 Branch of Construction Wage Determinations
3 Wage and Hour Division
4 U. S. Department of Labor
5 200 Constitution Avenue, N. W.
6 Washington, D. C. 20210
7

8 2.) If the answer to the question in 1.) is yes, then an
9 interested party (those affected by the action) can request
0 review and reconsideration from the Wage and Hour Administrator
1 (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

2
3 Wage and Hour Administrator
4 U.S. Department of Labor
5 200 Constitution Avenue, N. W.
6 Washington, D. C. 20210
7

8 The request should be accompanied by a full statement of the
9 interested party's position and by any information (wage payment
0 data, project description, area practice material, etc.) that the
1 requestor considers relevant to the issue.

2
3 3.) If the decision of the Administrator is not favorable, an
4 interested party may appeal directly to the Administrative Review
5 Board (formerly the Wage Appeals Board). Write to:

6
7 Administrative Review Board
8 U. S. Department of Labor
9 200 Constitution Avenue, N. W.
0 Washington, D. C. 20210
1

2 4.) All decisions by the Administrative Review Board are final.
3 END OF GENERAL DECISION



ATTACHMENT D

WELL LOG

LOG OF WELL - L/D No. 8

Sample No.	Elevation	Depth below top of casing	Thickness of Strata	Formation
1	640.0	2		Top of Casing
2	638.0	12	20	Medium Sand (original ground level)
3	618.0	22		Fine gravel and sand
4	614.0	26	18	"
5	608.0	32		"
6	600.0	40	8	Soft limestone
7	592.0	48		Sandstone
8	583.0	57		"
9	573.0	67		"
10	563.0	77		"
11	553.0	87		"
12	543.0	97		"
13	533.0	107		"
14	523.0	117		"
15	513.0	127	159	"
16	503.0	137		"
17	493.0	147		"
18	483.0	157		"
19	473.0	167		"
20	463.0	177		"
21	453.0	187		"
22	443.0	197		"
23	433.0	207	1	Silt
24	432.0	208		Limestone
25	430.0	210		"
26	423.0	217		"
27	413.0	227	59	"
28	403.0	237		"
29	393.0	247		"
30	383.0	257		"
31	373.0	267		Sandstone
32	363.0	277		"
33	353.0	287	31	"
34	343.0	297		"
35	342.0	298		Silt
36	336.0	304	9	"
37	333.0	307		Limestone
38	323.0	317		"
39	318.0	322	15	"

**AGREEMENT WITH BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY FOR RELOCATION, REARRANGEMENT OR ALTERATION OF
FACILITIES**

This Agreement is entered into this _____ day of _____, 2000, by and between The Burlington Northern and Santa Fe Railway Company (a Delaware corporation), having its principal office and place of business in the City of Ft. Worth, Texas (hereinafter "Owner"), and the United States of America, acting by and through the Department of the Army, U.S. Army Corps of Engineers, St. Paul District, having an address of 190 Fifth Street East, St. Paul, Minnesota (hereinafter "Government").

RECITALS:

Whereas, the Government has, under authority of the Rivers and Harbors Act, Public Law 71-520, approved July 3, 1930, which Act authorized a 9-foot channel and the canalization of the Mississippi River, heretofore undertaken the development and maintenance of a river navigation project known as Lock and Dam Number 8, Mississippi River (hereinafter the "Government Facility"); and

Whereas, the Government is undertaking a major maintenance and rehabilitation project identified as the Lock and Dam 8, Stage 2 Rehabilitation (hereinafter the "Project") on the Government Facility, to include certain work and improvements (as more particularly set forth in the Government Plans described hereinbelow) along and within railroad right-of-way of the Owner adjacent to the Government Facility which is near the City of Genoa, Vernon County, Wisconsin; and

Whereas, certain portions of the Government Plans for the Project pertain to the Owner's land and/or railroad right of way (Owner's land, whether owned in fee title or easement, hereinafter "Owner's Land") and/or Railroad Facilities (as defined below) and are to be performed by the Government's Contractor (as defined below), subject to the approval of Owner as provided in this Agreement, excepting any warning, flasher and crossing safety devices to be placed by Owner as provided herein and also excepting certain work to be accomplished by Owner in accordance with Owner's plans and specifications (hereinafter the "Owner's Plans"), which shall be subject to the approval of Government, as provided in this Agreement ; and

Whereas, the Owner is willing to convey to the Government such easement rights and interests in and to Owner's Land as may be necessary to construct the Project in accordance with the Government Plans, such easement rights and interests being further described hereinbelow and in the attachments and exhibits appended hereto, in consideration of the payment by the Government of the sum of \$_____Dollars (\$ _____.00) and all reasonable and legitimate costs of rearranging and/or altering Owner's Railroad Facilities at such location, in such a manner as to facilitate the construction, development, maintenance and use of the Project; and the Owner agrees that said consideration constitutes full, just and complete compensation for the acquisition by the Government of said easement rights and interests identified herein, as well as for Owner's alteration and/or rearrangement of said Railroad Facilities located thereon, as more

particularly set out in Owner's Plans.

Whereas, in order to construct the Project, temporary construction access will be required to portions of Owner's Land, such portions hereinafter referred to as the "Construction Access Parcels"; and

Whereas, the Project will require that Owner grant to Government permanent easements on certain portions of Owner's Land, such portions hereinafter referred to as the "Permanent Easement Parcels"; and

Whereas, the location maps for the Construction Access Parcels and location maps and legal descriptions for the Permanent Easement Parcels shall be developed and finalized in accordance with this Agreement; and

Whereas, the Owner is willing to grant to each contractor and sub-contractor of the Government (hereinafter, whether one or more, "Contractor") a right to enter the Construction Access Parcels, which right shall be in the form of the Agreement attached hereto as Exhibit "A" (which form of Agreement is hereinafter referred to as "Contractor's Right of Entry Agreement" and shall have appended thereto a location map(s) showing the Construction Access Parcels); and

Whereas, the Owner has constructed and is operating and maintaining Railroad Facilities (as defined in Section 6, below) on Owner's Land that may be affected by the Project;

NOW, THEREFORE, in consideration of the foregoing recitals, and in further consideration of the matters set forth below and the faithful performance of each party of the mutual covenants and agreements hereinafter set forth, it is mutually agreed as follows:

AGREEMENT:

Section 1. REVIEW AND APPROVAL OF PROJECT PLANS AND LEGAL DESCRIPTIONS, CERTAIN OBLIGATIONS OF THE GOVERNMENT AND THE OWNER.

A. Proposed plans for the Project have been prepared by the Government, with those portions of said Project plans and specifications which pertain to the Owner's Land and Railroad Facilities (excepting work to be performed by Owner in accordance with Owner's Plans) being identified as LOCK 8 LOCK WORK, STAGE 2, MAJOR MAINTENANCE - MISSISSIPPI RIVER, LOCK AND DAM NO. 8, GENOA, WISCONSIN, Drawings numbered M-L8-38/400 through M-L8-38/402, M-L8-38/407 through M-L8-38/410, M-L8-38/412, M-L8-38/415 & M-L8-38/416, M-L8-69/400 and M-L8-69/401, all dated as of 08-01-2000 (hereinafter referred to as the "Government Plans"). The Government Plans are subject to review and approval by Owner, which approval shall be in writing. Legal descriptions of the Permanent Easement Parcels (such legal descriptions hereinafter the "Legal Descriptions") have been developed by the Government, are attached hereto and made a part hereof by appendage of said Legal Descriptions (together with ancillary location maps) "B-1", "B-2" and "B-3" to Exhibit "B" hereto, Grant of Permanent Easements, and are subject to review and approval by Owner, which approval shall be in writing. After the Government Plans and Legal Descriptions have been approved by Owner in writing, the approved Government Plans and approved Legal Descriptions shall not be changed without Owner's prior written approval. The Government Plans are attached hereto and made a part

hereof as Exhibit "C". Owner has conducted an initial review of the Government Plans, and those Plans appear to be generally acceptable. If the Government Plans and the Legal Descriptions are acceptable, Owner will, within a reasonable time, confirm its approval of same in writing to Government. If the Government Plans and/or the Legal Descriptions are not acceptable to Owner, Owner will, within a reasonable time, advise the Government in writing of its concerns regarding same, and Government may revise the Government Plans and/or the Legal Descriptions to satisfy all reasonable concerns of Owner.

B. The Owner's Plans will detail all warning, flasher and crossing safety devices to be placed by Owner in connection with the Project and also all work to be accomplished by Owner within that part of Owner's Land contained within an area defined and bounded by lines running parallel to, and one foot outside of Owner's double railroad track, such placement and work to be performed by Owner in accordance with Owner's plans and specifications. The Owner's Plans (as herein defined) are subject to review and approval by the Government, which approval shall be in writing. After the Owner's Plans have been approved by the Government, the approved Owner's Plans shall not be changed without the Government's prior written approval. The Owner's Plans are attached hereto and made a part hereof as Exhibit "D". If the Owner's Plans are acceptable, Government will, within a reasonable time, confirm its approval of same in writing to Owner. If the Owner's Plans are not acceptable to Government, Government will, within a reasonable time, advise the Owner in writing of its concerns regarding same, and Owner may revise the Owner's Plans to satisfy all reasonable concerns of Government.

C. The Government hereby agrees, subject to the availability of funds, to maintain the improvements constructed in accordance with the Government Plans, at Government's sole expense, after construction of same by the Government's Contractor, in such a manner that the safe operation by the Owner of its Railroad Facilities is not impaired. Before any work is done on Owner's Land, each Contractor shall have executed and delivered to Owner a Contractor's Right of Entry Agreement in the form of the attached Exhibit "A," which Agreement shall provide Contractor with access to the Construction Access Parcels. The Owner shall maintain the improvements constructed by Owner, at Owner's sole expense, after construction of same in accordance with the Owner's Plans.

D. Following the written approval by the Owner of the Government Plans and Legal Descriptions, the Owner shall do the following:

(i) Upon receipt of the Contractor's Right of Entry Agreement, in the form of the attached Exhibit "A," duly executed by each Contractor, the Owner shall allow personnel and representatives of the Government, as well as personnel and representatives of Contractor and any subcontractors, such entry to the Construction Access Parcels as is reasonably necessary to allow such persons and entities to perform the work necessary to carry out the approved Government Plans.

(ii) Upon payment of such consideration as may be agreed to by Owner and Government, Owner shall execute and deliver to the Government a Grant of Permanent Easements in the form attached hereto as Exhibit "B."

Section 2. OBLIGATIONS OF GOVERNMENT.

A. The Government shall prepare (or cause its Contractor to prepare) the Government Plans and shall submit same to the Owner for review and approval prior to the commencement of any work on Owner's right of way. The Government shall award and administer the contract for the construction of the Project in order for the Project to be constructed in accordance with the Government Plans. The Government shall provide routine construction reports on the Project to the Owner as to Project work on or affecting Owner's Land. The Government shall also provide the Owner, for review and approval, any proposed modifications to the Government Plans, as well as any pertinent change orders in its contract with the Government's Contractor.

B. In requesting bids to cover any work related to the construction of the Project, the Government shall inform the potential bidders receiving the request for bids that the Contractor will be required to enter into a Contractor's Right of Entry Agreement, in the form attached hereto as Exhibit "A," prior to entering upon Owner's Land.

C. The Government will, to the extent provided for under 28 U.S.C. § 2675 et seq. (Federal Tort Claims Act) or as otherwise permitted by law, be liable for damages that may be caused by its employees or agents in connection with work that the Government may perform on the Project. The Government agrees that, as part of each contract entered into by it for any portion of the construction work on the Project, the Government will require the Contractor:

- (i) to indemnify and defend Owner from and against all claims, loss, damage, costs, or penalties arising from or related to Contractor's work on the Project; and
- (ii) during the period of construction, to name Owner as an additional insured on its general and automobile liability policies; and
- (iii) during the period of construction, to furnish waivers of subrogation in favor of the Owner from its insurance carriers.

The Government shall, however, assume no liability for any damages to persons, property, or any other liability which is compensated for by insurance carried by any Contractor of the Government. The existence or the non-existence of insurance shall not limit the Contractor's liability under this Agreement. The Government's liability for payments under this subsection C is further subject to the availability of appropriations for such payment, and nothing contained in this Agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet any deficiencies.

D. The Government, through its Contractor(s), shall obtain all necessary permits, licenses, and authority for the work to be performed by the Contractor(s), and shall provide in its contracts with its Contractor(s) that they shall obey and abide by all applicable laws, regulations, ordinances, and other rules of the United States of America, of the State (or political subdivisions thereof) wherein the work is done, or of any other duly constituted public authority.

E. The Government, through its Contractor(s), will provide all engineering services, perform all work, and furnish all labor, materials, tools, and equipment necessary for the Project, except such items of work as may be listed in Section 3, which shall be performed by the Owner.

F. The Government shall, as soon as practicable and in a reasonable period of time, inform the Owner of any proposed changes to the Government Plans, which Owner has the right to approve before any construction takes place.

G. Changes and alterations to the Government Plans, as approved by Owner, may be made when the Government's Contracting Officer and the Owner's Vice President, Engineering Services agree in writing that such changes and alterations are necessary in the best interests of all parties. All revisions of the Government Plans shall be prepared at the expense of the Government and shall, upon approval by Owner, become a part of this Agreement by reference.

H. It is understood that the safety and continuity of the Owner's railroad operations are of the utmost importance, and in order that such operations shall be adequately safeguarded, the Government and all Contractors, in the performance of work related to the Project or any time thereafter in the construction, operation, and maintenance of the Government Facility or any other Project facility, shall not obstruct, interfere with, or delay railroad operations or the maintenance or operation of existing Railroad Facilities, without the prior written approval of the Owner. The Government will require its Contractors to exercise like precaution and will diligently supervise its own work (and that of its Contractors) carried on in proximity to the Owner's Railroad Facilities, and shall not substantially or unduly obstruct, interfere with, or delay the operations or maintenance activities of the Owner. Each Government Contractor shall notify the Owner in advance, prior to the Government or such Contractor performing work on or adjacent to the Owner's right of way and/or Railroad Facilities, so as to enable the Owner to furnish flagging and such other protective services (at Contractor's expense) as the Owner deems necessary to ensure the safety of its railroad operations.

I. The Government shall require any Contractor working on the Project to comply with the Contractor Requirements attached hereto as Exhibit "A- 1."

Section 3. RIGHTS AND OBLIGATIONS OF OWNER.

A. The Owner shall perform the work set forth in Section 1.B above, to include all warning, flasher and crossing safety device installation in connection with the Project and also all work to be accomplished by Owner within that part of Owner's Land contained within an area defined and bounded by lines running parallel to, and one foot outside of Owner's double railroad track, such placement and work to be performed by Owner in accordance with Owner's Plans.

B. The Owner shall have the right to furnish all flagging and/or other protective services and devices as in its judgment may be necessary to ensure the safety of its operations during the Project construction. Wherever safeguarding the operations of the Owner is mentioned in this Agreement, it is intended to cover and include all users of the Owner's right of way having permission for such use. The Owner will submit to the Contractor current bills for flagging and other protective services and devices during progress of the Project and a final billing for these services promptly following written notice from the Government of the Project's completion, and the Owner will be promptly paid by the Contractor for such flagging and protective services and devices in accordance with Exhibits "A" and "A-1."

Conditions when flagmen and protective services and devices may be furnished by the Owner include, but are not limited to:

- (i) When in the reasonable opinion of the Owner, protection is necessary to safeguard the Owner's trains, engines, facilities, or property.
- (ii) When any work is performed over, under, or within 25 feet of tracks or any of Owner's Railroad Facilities.
- (iii) When work in any way interferes or potentially interferes with the safe operation of trains at usual speeds or threatens, damages, or endangers track, trains, personnel, equipment, or Railroad Facilities.
- (iv) When a hazard is presented to Railroad Facilities due to the presence of persons, material, or equipment in the vicinity or the occurrence of blasting in the vicinity.
- (v) Where or when material is being hauled across tracks. Special clearance must be obtained from the Owner before moving heavy or cumbersome objects and equipment which might result in making the track impassable.

C. The Owner shall make available all original work item unit costs and/or payrolls, material records, and accounts for all charges and expenditures for which reimbursement will be claimed from the Government to allow the Government to check and audit the invoices submitted by the Owner. So far as is practicable, separate records shall be maintained by the Owner on all items and accounts which shall constitute the basis of information from which the invoices will be prepared. The Government reserves the right to withhold payment until such audits are completed. The Government shall not unreasonably delay such audits and shall not unreasonably withhold such payments.

D. The estimated cost for work to be performed by the Owner in accordance with the Owner's Plans is \$ _____. This cost shall not be taken as an implied upper or lower limit for the Government's obligation but as a mutually agreed anticipated cost of the Owner's work. Reimbursable costs of such work shall include all items of expense properly chargeable thereto, including, but not limited to labor, materials, transportation, insurance, overhead charges properly allocable to the work, supervision, surveys, permits, equipment, machinery, engineering, inspection, contract administration, servitudes, instruments, taxes and rental of tools employed in the work, together with such other items of expense (exclusive of profit to the Owner) as should, in the opinion of the Government, be included in the cost of the work. The Government shall reimburse the Owner for such costs after completion and inspection of the work and upon receipt of invoices, supported by such evidence of payment made by the Owner as may be required by the Government. The Government will review the Owner's invoices for reasonableness and will not reimburse the Owner for costs determined to be excessive. The Government reserves the right to withhold payment until audits are completed (See Section 3, sub-paragraph C, above).

Section 4. CERTAIN ADDITIONAL OBLIGATIONS OF GOVERNMENT.

A. The Government (or, for flagging services, the Contractor) shall reimburse the Owner for all reasonable costs incurred by Owner that are related to the Project. The Government shall also pay to the Owner, upon execution and receipt of the Grant of Permanent Easements, such sum as Government and Owner may agree upon for the rights granted by the Contractor's Right of Entry Agreement and the Grant of Permanent Easements.

B. If any maintenance work on the Project by the Government should require any extensive reconstruction or renewal work, or if any other entry is necessary upon the Owner's Land beyond the Permanent Easement Parcels and/or the Construction Access Parcels, the Government shall require its Contractor(s) to execute and deliver to Owner a Contractor's Right of Entry Agreement in the form attached hereto as Exhibit "A."

C. The Government's liability for payments under this Section 4 is further subject to the availability of appropriations for such payment, and nothing to the contrary contained in this Agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet any deficiencies.

D. Government shall cause its Contractor(s), at its/their own expense, to obtain, prior to commencing any work related to the Project within Owner's railroad right-of-way, and to maintain during all periods when such Contractor is performing such work, the following insurance:

- (i) Commercial General Liability Insurance, to include contractual liability and products/completed operations, against claims arising out of bodily injury, illness and death and from damage to or destruction of property of others, including loss of use thereof, and including liability of the Owner, Contractor, and AII subcontractors, and each of them, with minimum limits for bodily injury and property damage of \$2,000,000 for each occurrence with an aggregate to limit of no less than \$6,000,000. This policy shall contain a "Waiver of Transfer Rights" endorsement to waive any right of recovery that the insurance company may have against Owner because of payments made for bodily injuries or property damage.
- (ii) Business Automobile Policy Insurance, including any and all vehicles owned or hired by the Contractor and used in performing any of the services under this Agreement, with minimum limits for bodily injury and property damage of \$1,000,000 per occurrence.
- (iii) Workers' Compensation Insurance or coverage as required under the Workers' Compensation Act of the State of Wisconsin. The policy should include occupational disease to required statutory limits, employer's liability of \$1,000,000 to include FELA, if appropriate, and an "all states" endorsement.

Owner shall be a named additional insured under the policies specified in (i), (ii), and (iii) above.

- (iv) In addition to the insurance requirements of (i), (ii), (iii) above, Contractor will be required to furnish a Railroad Protective Liability Insurance policy issued in the name of Owner with a limit of at least Two Million Dollars (\$2,000,000) for bodily injury and property damage per occurrence and an aggregate of at least Six Million Dollars (\$6,000,000) when work to be performed by Contractor or Government under this Agreement is to be performed upon Owner's right of way or within 25 feet of Owner's railroad tracks. If there is more than one Contractor,

only one such policy is required for the construction phase of the Project.

It is understood and agreed that these policies are primary and not contributory and release Owner as to payments of any earned premium. All insurance certificates provided by Contractor must be satisfactory to Owner as to insurance carriers covering the risks and must bear a cancellation clause providing that such insurance may not be canceled, amended, or allowed to lapse until the expiration of at least thirty (30) days advance written notice to Owner.

Prior to the entry upon Owner's property, Contractor shall furnish to Owner for approval the original Certificate of Insurance, the original Policy, or other satisfactory evidence that all the insurance which Contractor is obliged to furnish under the foregoing provisions has been obtained, and such evidence shall be resubmitted to Owner each September 1 and March 1 thereafter for each Contractor then performing construction or maintenance of the Project.

Section 5. AGREEMENT OF THE GOVERNMENT REGARDING OWNER'S RAILROAD FACILITIES

A. No permission is granted to go on or within 25 feet of Owner's railroad tracks, unless and until a flagman or flagmen are provided by Owner to watch for trains. Said flagmen shall be employees of the Owner, and shall be acting under the direction and control of the Owner's Superintendent, or his designated representative. The Government hereby agrees to promptly pay, or cause Contractor to pay, upon receipt any bill for the cost of providing such flagman or flagmen, at the prevailing rate, plus additives. Government further agrees to obey and follow and to cause its Contractors to obey and follow all directions and instructions of said flagman or flagmen while on or about Owner's property.

B. At all times, the Government's and Contractor's machinery and materials shall be kept off of the Owner's railroad tracks except as herein otherwise authorized.

C. When not in use, the Government's and Contractor's machinery and materials may be stored on Owner's property in connection with work performed pursuant to this Agreement, but not in any location or manner as may interfere with the Owner's operation or maintenance of any of Owner's Railroad Facilities.

D. There shall be no crossings of Owner's tracks except at existing open public crossings or crossing being constructed as part of the Project.

Section 6. DEFINITIONS.

A. [omitted]

B. [omitted]

C. [omitted]

D. "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts for the Government and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of

their authority as delegated by the Contracting Officer.

E. "Railroad Facilities" means track structures, signal, and communication lines, fiber optic lines, wire lines, and all other facilities of the Owner located upon its property. The term shall also include the facilities of others on the Owner's property with the consent of the Owner.

Section 7. CABLE SYSTEM PROVISIONS.

THE GOVERNMENT SHALL PLACE ITS CONTRACTOR(S) ON NOTICE THAT FIBER OPTIC, COMMUNICATIONS, CONTROL SYSTEMS, AND OTHER TYPES OF CABLES MAY BE BURIED ON OWNER'S PROPERTY. Before beginning work, each Contractor shall telephone Owner's Communications Network Control Center at 1-800-533-2891 (a 24-hour number) to determine if cable systems are buried on Owner's property to be used by Contractor. The Contractor shall contact the cable companies to have cables located and make arrangements with the cable companies and Owner as to the protective measures that must be adhered to prior to the commencement of any work on Owner's property. In addition to the liability terms elsewhere in this Agreement, Government shall cause its Contractor(s) to indemnify, defend, and hold Owner harmless against and from all cost, liability, and expense whatsoever occurring within the Owner's railroad right-of-way and in connection with the construction work being performed by such Contractor in accordance with this Agreement (including without limitation, attorney's fees and court costs and expenses) and arising out of or in any way contributed to by (1) any act or omission of Contractor, its subcontractors, agents and/or employees, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Owner's property, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies).

Section 8. NOTICES.

Except as otherwise provided in this Agreement, all notices or other communications required or contemplated by this Agreement shall be in writing and shall be effective upon delivery to the addresses specified in this Section. If given by facsimile transmission (fax), they shall not be effective until received in legible form. The parties' addresses for purposes of this Section 8 are set forth below. A party may change its address for such purposes by giving written notice of the change to the other parties.

Notice and communication addresses:

The Burlington Northern and Santa Fe
Railway Company
Attn: Spencer D. Arndt
Manager Public Projects
Northtown General Office Building
80-44th Avenue N.E.
Minneapolis, MN 55421
(612) 782-3478
Fax: (612) 782-3061

U.S. Army Corps of Engineers
Attn: Chief, Real Estate Division

DACW37-00-B-0015

00830-E-9

190 Fifth Street East
St. Paul, MN 55101
Fax: (651) 290-5255

Section 9. INDEMNITY

A. The liability of the Government for damages, claims, suits, costs, and expenses that arise from the activities of the Government under this Agreement shall be to the extent permitted by law under the Federal Tort Claims Act, 28 U.S.C. § 2675 et seq.

B. Except as otherwise provided in this Agreement, the liability of the Owner for damages, claims, suits, costs, and expenses that arise from its activities under this Agreement shall be to the extent permitted by law.

Section 10. SALVAGE.

Any property or equipment acquired for the purpose of providing temporary protective services during the Project's construction which is paid for by the Government shall become the property of the Government upon such payment by the Government unless otherwise agreed to by the parties.

Section 11. OWNERSHIP AND CONDUCT OF THE WORK.

A. The Project constructed hereunder shall be the property of the Government. The Government shall be responsible for all materials furnished and work performed by it in accordance with this Agreement.

B. The Owner shall cooperate to the extent practicable with any work being performed by the Government and/or the Government's Contractor(s) pursuant to this Agreement. The Owner shall not commit any act which materially interferes with the performance of any such work, so long as such work does not interfere with safe operation of Owner's Railroad Facilities.

Section 12. MAINTENANCE DURING CONSTRUCTION .

The parties agree that in the event of an occurrence precipitated by the work on the Project which adversely affects the Owner's train operations, the Government (subject to the availability of appropriations for such payment) and/or the Contractor shall have the responsibility for paying for or performing whatever corrective action is necessary to immediately restore the Owner's train operations and reimburse Owner's other losses.

If the occurrence occurs on an area that is being constructed by the Government's Contractor(s) and is precipitated by acts or omissions of the Government or the Government's Contractor(s), the Owner may require the Government (subject to the availability of appropriations for such payment) and/or the Government's Contractor(s) to take immediate corrective action.

Section 13. DISPUTES.

As a condition precedent to a party bringing any suit for breach of this Agreement, that

party shall notify the other party (or parties) in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

Section 14. COMPLETION

The Government shall complete construction of that part of the Project described in the Government Plans as soon as practicable and in a reasonable period of time. The Owner shall complete the work described in the Owner's Plans as soon as practicable, coordinating such work with the Contractor so as to facilitate completion of the Project most expeditiously. In any event, Owner shall commence such work within 20 (twenty) days after receipt of notice to proceed and shall complete such work within 30 (thirty) calendar days from the date of receipt of said notice to proceed, unless the time for completion is extended by the Contracting Officer.

Section 15. GRATUITIES.

- A. The right of the Owner to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Owner, its respective agents, or another representative –
- (i) offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
 - (ii) intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- B. The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- C. If this Agreement is terminated under subsection A, above, the Government is entitled –
- (i) to pursue the same remedies as in a breach of the Agreement; and
 - (ii) in addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Owner in giving gratuities to the person concerned, as determined by the agency head or a designee.
- D. The rights and remedies of the Government provided in this Section 15 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

Section 16. EQUAL OPPORTUNITY.

- A. The Owner shall comply with subsections B (i) through (xi), below. Upon request, the Owner shall provide information necessary to determine the performance of this clause.

- B. (i) The Owner shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (ii) The Owner shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection of training, including apprenticeship.
- (ii) The Owner shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (iv) The Owner shall, in all solicitations or advertisements for employees placed by or on behalf of the Owner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (v) The Owner shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Owner's commitments under this Section 16, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (vi) The Owner shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (vii) The Owner shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.
- (viii) The Owner shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Owner's compliance with the applicable rules, regulations, and orders.
- (ix) If the OFCCP determines that the Owner is not in compliance with this Section 16 or any rule, regulation, or order of the Secretary of Labor, this Agreement may be canceled, terminated, or suspended in whole or in part and the Owner may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Owner as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

The Owner shall include the terms and conditions of subsections B (i) through (xi) of this Section 16 in every subcontract or purchase order that is not excepted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

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

A. Notwithstanding any other clause in this Agreement, disputes relative to this clause will be governed by the procedures in 41 C.F.R. 60-1. 1.

Section 17. DRUG-FREE WORKPLACE.

A. Owner and the Government will abide by this Section and will include and require their respective Contractor(s) (if any) to include the following in each contract awarded by Owner or the Government for work by a Contractor or subcontractor.

B. Definitions. As used in this Section 17:

"controlled substance" means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. § 812) and as further defined in regulation at 21 C.F.R. 1308.11-1308-15.

"conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"drug-free workplace" means a site for the performance of work done in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"employee" means an employee of a Contractor directly engaged in the performance of work under a contract.

"individual" means an offeror/Contractor that has no more than one employee including the offeror/Contractor.

C. The Contractor, if other than an individual, shall:

- (i) publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees

for violations of such prohibition;

- (ii) establish a drug-free awareness program to inform such employees about -
 - (1) the dangers of drug abuse in the workplace;
 - (2) the Contractor's policy of maintaining a drug-free workplace;
 - (3) any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (iii) provide all employees engaged in performance of the contract with a copy of the statement required by subsection C(i) of this Section 17;
- (iv) notify such employees in the statement required by subsection C(i) of this Section 17, that as a condition of continued employment on the contract, the employee will (1) abide by the terms of the statement; and (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five(5) days after such conviction;
- (v) notify the Contracting Officer within ten (10) days after receiving notice under subsection C(iv)(2) of this Section 17 from an employee or otherwise receiving actual notice of such conviction;
- (vi) within 30 days after receiving notice under subsection C(iv)(2) of this Section 17 of a conviction, impose the following sanctions or remedial measure on any employee who is convicted of drug abuse violations occurring in the workplace:
 - (1) taking appropriate personnel action against such employee, up to and including termination; or
 - (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
- (vii) make a good faith effort to maintain a drug-free workplace through implementation of subsections C(i) through C (vi) of this Section 17.

D. The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract.

E. For Government contracts, in addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of subsections C and D of this Section 17 may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract

payments, termination of the contract for default, and suspension or debarment.

Section 18. APPROVAL.

This Agreement shall be subject to the written approval of the Government's Chief, Real Estate Division, U.S. Army Corps of Engineers, St. Paul District or his authorized representative, and shall not be binding until so approved. Execution of this Agreement shall be proof of such approval.

Section 19. USE OF OTHER GOVERNMENTAL FUNDS.

The Government shall not pay the Owner for work items where other Federal or State funds have been used by the Owner for the same items. The Owner agrees not to invoice the Government for any such duplicate payments and shall submit to the Government all pertinent documentation including contracts, letters, and invoices on any other Federal or State disbursements received by Owner in connection with the Project. The Owner shall also include a cost tabulation of all other governmental funds received for the work with their invoice for reimbursement.

Section 20. CONSTRUCTION AND FUNDING ASSURANCES.

A. The Government makes the following representations to Owner, which representations are a major inducement for Owner to enter into this Agreement, without which Owner would not enter into this Agreement:

(i) 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 sums agreed upon herein is dependent upon reservation of funds from future appropriations. The responsibilities of the Government are limited by this clause notwithstanding any contrary provision of the "Obligations of the Government" clauses contained herein or any other clause of this Agreement.

(ii) The sum of \$10,000.00 has been reserved for payment to the Owner, for work under this Agreement, during the current fiscal year (2000). It is expected that Congress will make appropriations for future fiscal years from which additional funds will be reserved for expenditure for work to be performed under this Agreement.

(iii) Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time shall not entitle the Owner to a price adjustment under the terms of this Agreement except as specifically provided herein. No such failure shall constitute a breach of this Agreement, 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.

(iv) If costs will be such that funds reserved for the Agreement will be exhausted before the end of any fiscal year, the Owner shall give written notice to the District Engineer 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 Agreement during that fiscal year. This notice shall be given not less than 60 days prior to the estimated date of

exhaustion of said funds. The Government will thereafter notify the Owner regarding the availability of additional funds. No payments will be made after exhaustion of funds except to the extent that additional funds are reserved for payment of work performed under this Agreement. An equitable adjustment in performance time shall be made for any increase in time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds. 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 Owner, by written notice delivered to the District Engineer at any time before 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.

(v) Owner has expressed concern that its right-of-way could be left in an unsatisfactory condition if adequate funding for the Project is delayed or denied by the United States Congress. In light of this concern, the Government (and Contractor by incorporation of this Agreement, by reference, into Government's contract with Government's Contractor) agrees to use its best efforts to structure the construction work within Owner's railroad right-of-way so that said right-of-way and Railroad Facilities are left in a safe, orderly and serviceable condition during such construction.

Section 22. SURVIVAL.

The provisions of this Agreement shall survive the completion of the Project.

Section 23. BETTERMENTS.

If the Owner desires any improvement in design, construction or capacity over and above what is required to provide facilities of equal service and utility, such improvement shall constitute a betterment and will be paid for by the Owner; provided, however, that the term "Betterment" will not be deemed to include more costly construction or design necessitated solely as a result of the relocation. The Owner and Government agree that the improvements and construction detailed in the Government Plans and the Owner's Plans (respectively, Exhibits C&D hereto), do not constitute "Betterments" as of the date hereof.

Section 24. OPERATION OF THE PROJECT.

The Government agrees that it will operate the Project in a manner that will cause the least disruption to Owner's railroad operations.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

:
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY
By _____

Title:

THE UNITED STATES OF AMERICA
Corps of Engineers - St. Paul District,
By _____

Title- Chief, Real Estate Division

Approved for legal sufficiency:

Attorney-Advisor, Real Estate Division
St. Paul District, Corps of Engineers