

Request for Proposal  
W912ER22R0007

Munitions Storage Area  
(MSA), Jordan

Volume 1 of 3  
Solicitation Instructions  
Contract Clauses



US Army Corps  
of Engineers  
Middle East District

<b>SOLICITATION, OFFER, AND AWARD</b> <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO. W912ER22R0007	2. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 22-Oct-2021	PAGE OF PAGES 1 OF 169
	<b>IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.</b>			

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO.	6. PROJECT NO.
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7. ISSUED BY US ARMY CORPS OF ENGINEERS-CETAM-CT MIDDLE EAST DISTRICT, CETAM-CT PO BOX 2250 WINCHESTER VA 22604-1450	CODE W912ER	8. ADDRESS OFFER TO <i>(If Other Than Item 7)</i> CODE  <b>See Item 7</b>
TEL:	FAX:	TEL: FAX:

9. FOR INFORMATION CALL:	A. NAME RYAN GREGORY	B. TELEPHONE NO. <i>(Include area code) (NO COLLECT CALLS)</i> 540-665-3946
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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):*

Design-Bid-Build Construction of Munitions Storage Area (MSA), Undisclosed Location, Hashemite Kingdom of Jordan

Magnitude of Construction: The estimated cost of this construction is between \$25,000,000.00 and \$100,000,000.00

Notes:

(a) The Government reserves the right to incorporate the awarded proposal into the contract and distribute the proposal as deemed necessary. Any deviations from the proposal must be approved by the Contracting Officer.

(b) The Contractor is required to provide all documentation requested in this solicitation (tender) to include Bonding, and Defense Base Act (DBA) Insurance after contract award and prior to Notice to Proceed.

(c) The successful offeror is required to provide a construction surety by submitting Performance and Payment Bonds (See Contract Clause 52.228-14 and 52.228-15) or Bank Letters of Guarantee (See solicitation Appendix E).

(d) Funds are authorized but are not presently available for this acquisition. No contract award will be made until funds are made available.

(e) All Contractors shall provide proof of registration within the System for Award Management (SAM) and provide a valid CAGE Code and DUNS to be considered for award.

11. The Contractor shall begin performance within 1 calendar days and complete it within 870 calendar days after receiving  award,  notice to proceed. This performance period is  mandatory,  negotiable. (See 52.211-10 \_\_\_\_\_.)

12 A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? <i>(If "YES," indicate within how many calendar days after award in Item 12B.)</i> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	12B. CALENDAR DAYS 20
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13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and 1 copies to perform the work required are due at the place specified in Item 8 by 04:30 PM (hour) local time 22 Nov 2021 (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 90 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:

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

TEL:

EMAIL:

31B. UNITED STATES OF AMERICA  
BY

31C. AWARD DATE

Section 00 10 00 - Solicitation

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Mobilization and Demobilization FFP Mobilization and Demobilization in accordance with the contract documents. FOB: Destination PSC CD: Y1JZ	1	Job		

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002	Site Survey FFP Site Survey in accordance with the contract documents FOB: Destination PSC CD: Y1JZ	1	Job		

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003	Construct Storage IGLOOS (422-264) FFP Construct Storage IGLOOS (422-264), in accordance with the contract documents FOB: Destination PSC CD: Y1JZ	1	Job		

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004	Construct Aircraft SPT Equip (MUNS) FFP Construct Aircraft SPT Equip (MUNS) MX FAC (TMFA) (218-712), in accordance with the contract documents FOB: Destination PSC CD: Y1JZ	1	Job		

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0005	Construct Munitions MX Admin FFP Construct Munitions MX Admin Facility (MAFA) (610-144), in accordance with the contract documents FOB: Destination PSC CD: Y1JZ	1	Job		

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0006	Construct SHOP, Tactical Missile MX FFP Construct SHOP, Tactical Missile MX Admin (TWMS) (212-213), in accordance with the contract documents FOB: Destination PSC CD: Y1JZ	1	Job		

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0007	Construct SHOP, Conventional Munitions FFP Construct SHOP, Conventional Munitions (CWMS) (216-642) in accordance with the contract documents FOB: Destination PSC CD: Y1JZ	1	Job		

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0008	Construct Munitions Area Entry Control FFP Construct Munitions Area Entry Control Point (ECP 1) (730-839) in accordance with the contract documents. FOB: Destination PSC CD: Y1JZ	1	Job		

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0009	Construct Munitions Area Entry Control FFP Construct Munitions Area Entry Control Point (ECP 2) (730-839) in accordance with the contract documents FOB: Destination PSC CD: Y1JZ	1	Job		

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0010	Construct Munitions Storage Area, Suppor FFP Construct Munitions Storage Area, Supporting Facilities in accordance with the contract documents. FOB: Destination PSC CD: Y1JZ	1	Job		

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0011 OPTION	Option #1 Construct Bomb build pad FFP Option #1 Construct Bomb build pad and trailer parking in accordance with the contract documents. FOB: Destination PSC CD: Y1JZ	1	Job		

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NET AMT



ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0012		1	Job		
OPTION	Option #2 Construct Sunshade for bomb FFP				
	Option #2 Construct Sunshade for bomb build pad in accordance with the contract documents.				
	FOB: Destination				
	PSC CD: Y1JZ				

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0013		1	Job		
OPTION	Option #3 Construct Asphalt for Road A FFP				
	Option #3 Construct Asphalt for Road A west of the ECP in accordance with the contract documents.				
	FOB: Destination				
	PSC CD: Y1JZ				

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0014		1	Job		
OPTION	Option #4 Construct Shotcrete, wet mix FFP				
	Option #4 Construct Shotcrete, wet mix, fiber reinforced covering on the Storage Igloos in accordance with the contract documents				
	FOB: Destination				
	PSC CD: Y1JZ				

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0015		1	Job		
OPTION	Option #5 Construct Geosynthetic FFP				
	Option #5 Construct Geosynthetic Cementitious Composite Mat (GCCM) covering on the Storage Igloos in accordance with the contract documents				
	FOB: Destination				
	PSC CD: Y1JZ				

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NET AMT

DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	DODAAC / CAGE
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0001	870 dys. ANP	1	W912ER DISTRICT (TAM), USACE - MIDDLE EAST DISTRICT (CETAM-CT) 201 PRINCE FREDERICK DRIVE WINCHESTER VA 22602 540-665-2994 FOB: Destination	W912ER
0002	870 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	W912ER
0003	870 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	W912ER
0004	870 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	W912ER
0005	870 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	W912ER
0006	870 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	W912ER
0007	870 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	W912ER
0008	870 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	W912ER
0009	870 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	W912ER
0010	870 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	W912ER
0011	870 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	W912ER
0012	870 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	W912ER
0013	870 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	W912ER
0014	870 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	W912ER
0015	870 dys. ANP	1	(SAME AS PREVIOUS LOCATION) FOB: Destination	W912ER

Section 00 21 00 - Instructions

00 21 00

## **INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS**

### **A. GENERAL INFORMATION**

This solicitation pertains to a Firm Fixed Price (FFP) contract for construction services in Jordan using a design-bid-build procurement process. The U.S. Army Corps of Engineers (USACE), Transatlantic Middle East District (TAM), has a requirement from the U.S. Air Force to construct a Munitions Storage Area (MSA) and infrastructure within an undisclosed location in the Hashemite Kingdom of Jordan.

The primary North American Industry Classification System (NAICS) code for work under this procurement is 236220 – Commercial and Institutional Building Construction with a small business size standard of \$ 39.5 million.

This project will be awarded based on the CLINs in the bid schedule and will be awarded to a single offeror. The magnitude of construction for this project is between \$25,000,000.00 and \$100,000,000.00.

The contractor shall provide all management, administration, quality control, labor, transportation, equipment, materials, vehicles, supplies, and other items as necessary to perform the services contained in the scope of work.

**System For Award Management (SAM).** Contractors (including joint venture entities) shall be registered in the SAM and determined to be responsible prior to award. For more information, see the SAM website at <https://www.sam.gov/SAM/>. Please ensure that NAICS code 236220 – Commercial and Institutional Building Construction is listed in your SAM registration.

### **B. PROPOSAL REQUIREMENTS, CONTENT, AND FORMAT**

The Government will not reimburse any costs incurred or associated with preparation and submission of any responses to this solicitation. Oral explanations or instructions to offerors are not binding. Any information given to an offeror which impacts the solicitation and/or offer will be given in the form of a written amendment to the solicitation. Any and all amendments to the solicitation will be issued electronically at the SAM.gov website. It is an offerors responsibility to continuously check for any amendments to the solicitation and acknowledge any and all amendments in its proposal submission.

Offerors shall not modify the terms and conditions of the solicitation in either the technical or price proposal or add conditions or qualifications to their offers. Should an offeror include terms and conditions that conflict with the terms and conditions of the solicitation, that offeror may be determined to be ineligible for award. Any questions

related to specific terms and conditions contained within the solicitation should be resolved prior to submission of an offer.

References to “confidential” projects cannot be submitted to demonstrate capability unless all of the information required for evaluation as specified herein can be provided to the Government as part of an offerors technical proposal. Offerors that include information in their proposals they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall clearly mark their proposals in accordance with the instructions at FAR clause 52.215-1, *Instructions to Offerors-Competitive Acquisition*, paragraph (e), *Restriction on Disclosure and Use of Data*.

Use of the words “**will**”, “**shall**”, or “**must**” indicates a mandatory requirement for which failure to comply, at the time and date for submission of proposals, may result in an offerors proposal being disqualified from consideration for Award. Failure to comply with non-pricing requirements that are annotated with the words “**should**” or “**may**” can result in a lowering of an offerors non-pricing ratings, and may have a significant effect upon an offeror being selected for the contract award. Time periods, if stated as a number of days, are calendar days unless otherwise specified.

## 1. **PROPOSAL CONTENT**

Offerors are required to submit proposals with at least the minimum content specified herein. A proposal without the minimum content may result in a determination that the proposal is non-responsive. The Government will not make assumptions concerning intent, capabilities, or experiences. Clear identification of proposal details shall be the sole responsibility of an offeror.

All information intended to be evaluated as part of the technical proposal shall be submitted within the technical proposal. Do not include references to material or information not found within the technical proposal. Referencing information not found within the proposal could lead to an offerors proposal being determined unacceptable if materially incomplete in any aspect.

An offerors proposal shall be submitted electronically, and shall be comprised of three files, in Adobe portable document format (PDF), or comparable format: the first file will include the offerors Volume I – Non-Price (Technical) Proposal, the second file will include the offerors Volume II – Price Proposal, and the third file will include the offerors Volume III – Responsibility Determination. **All documents must be searchable.**

Offerors shall verify that the information for all forms submitted is current, correct, and complete, including names of points of contact, email addresses, and telephone numbers.

The Government will not evaluate any material that exceeds the page limits specified within each evaluation factor. For the evaluation of each factor the first page will be

considered page one (1) to determine adherence to the page limit. Elaborately prepared proposals are not required, and any material in excess of what is requested, such as corporate marketing information, will not be considered.

Failing to submit or completely fill out the solicitation attachments found at Appendix A may result in a determination that the proposal is unacceptable. Therefore, offerors are urged to follow instructions and raise questions through the Bidder Inquiry process (via ProjNet) described below.

**VOLUME I – NON-PRICE (TECHNICAL) PROPOSAL:** The information required within each factor of an offerors technical proposal is described under below. Do not submit pricing information within the non-price (technical) proposal. Volume I shall include the information listed below. Offerors are reminded to adhere to any page limitations stated in a specific factor.

i. **COVER PAGE:** A cover page shall appear at the beginning of the Volume I and, at a minimum, shall consist of the following information:

- a. Solicitation number W912ER22R0007.
- b. Offerors name, physical mailing addresses, telephone number, and email address of the official having the authority to bind the offeror contractually.
- c. Offerors DUNS Number, CAGE Code, and Tax ID (TIN).

ii. **TABLE OF CONTENTS:** A table of contents shall be placed in Volume I, which identifies major areas by title and page numbers.

iii. **NON-PRICE (TECHNICAL) PROPOSAL:**

- a. Factor 1 – Construction Experience: All documents comprising the offerors *Factor 1: Construction Experience* submission shall be included.
- b. Factor 2 – Technical Approach: All documents comprising the offerors *Factor 2: Technical Approach* submission shall be included.
- c. Factor 3 – Past Experience: All documents comprising the offerors *Factor 3: Past Performance* submission shall be included.

iv. **Completed Representations and Certifications** (Section 00 45 00).

v. (where applicable) **Completed Corporate Certificate/Authority to Bind Partnership (Attachment 1), or Joint Venture Agreement**

\_\_\_\_\_ If the offeror is a corporations, completed Corporate Certificate; OR

\_\_\_\_\_ If the offeror is a partnership, a completed Authority to Bind Partnership and a copy of the partnership agreement

\_\_\_\_\_ If the offeror is a joint venture (JV), a copy of the Joint Venture Agreement. If any member of the JV is a corporation, the offeror must also submit a Corporate Certificate for each corporate JV member.

Failure to submit the required information, including the Completed Representation and Certifications (Section 00 45 00), or Corporate Certificate/Authority to Bind Partnership and Joint Venture Agreement (if applicable), may result in a determination that the proposal is unacceptable.

**VOLUME II - PRICE PROPOSAL:** The information required within an offerors price proposal is described under the price evaluation, *Factor 4, Price*. Within an offerors price proposal, the following shall also be submitted:

- i. **COVER PAGE:** A cover page shall appear at the beginning of Volume II and, at a minimum, shall consist of the following information:
  - a. Solicitation number
  - b. Offerors name, physical mailing addresses, telephone number, and email address of the official having the authority to bind the offeror contractually
  - c. Offerors DUNS Number, CAGE Code, and Tax ID (TIN)
- ii. **TABLE OF CONTENTS:** A table of contents shall be placed in Volume II, which identifies major areas by title and page numbers.
- iii. **PRICE PROPOSAL**
  - a. Signed *Solicitation, Offer, and Award* (SF 1442) with blocks 14-20c completed, including acknowledgment of all amendments.
  - b. Completed SF 1442, Section 00 10 00, CLIN Schedule.
  - c. Completed Proposal Schedule and Cost Breakdown Sheet (Attachment 5) in an Excel format. Ensure figures and totals match Section 00 10 00, CLIN Schedule.

Offerors shall verify that the information for all forms submitted is current, correct, and complete, including names of points of contact, email addresses, and telephone numbers.

Failing to submit or completely fill out the solicitation attachments found at Appendix A may result in a determination that the proposal is unacceptable.

Therefore, offerors are urged to follow instructions and raise questions through the Bidder Inquiry process (via ProjNet) described in Section II.D, below.

**VOLUME III – RESPONSIBILITY DETERMINATION QUESTIONNAIRE:** The information required within Volume III is described in Appendix A, Attachment 10, Responsibility Determination.

This Questionnaire is not an additional non-pricing factor; the information requested pertains to the offerors ability to perform the contract (if awarded) rather than the acceptability of the offer presented. Your responses to this Questionnaire will assist the Contracting Officer in making their responsibility determination. It is the duty of the offeror to supply all necessary documentation to establish its responsibility.

## 2. PROPOSAL FORMAT

Proposals **must** be typed and submitted in English. Proposals submitted in a language other than English are unacceptable. Letters of Commitment, partnership agreements or licenses if not written in English, **must** be accompanied by an English translated copy with a signed statement, in English, by an authorized representative who can bind the entity of each partner that the English translation is true and correct.

An offerors proposal must be submitted as three separate files in Adobe portable document format (PDF), or comparable format: the first file will include the offerors Volume I – Non-Price (Technical) Proposal, the second file will include the offerors Volume II - Price Proposal, and the third file will include the offerors Volume III – Responsibility Determination. The proposal must be submitted electronically thru the DoD SAFE (Secure Access File Exchange) site located at <https://safe.apps.mil> as discussed in in the Proposal Submission Instructions. This site supports file package exchanges of up to 8GB. Each volume must include the content and adhere to the format discussed above. **All documents must be searchable.**

An offerors proposal must be submitted as three separate volumes (PDF files) as identified in Section II. Paragraph B.1, Proposal Content. Page limits, if stipulated must be adhered to. The Government will not evaluate any material that exceeds the page limits specified herein. Proposals shall be sized to print on THE EQUIVALENT TO 8 ½" X 11" paper; I.E. A4 (THE EQUIVALENT TO 11" X 17" for drawings; I.E. A3, WITH THE EXCEPTION FOR THE PRELIMINARY SCHEDULE WHICH MAY BE SIZED TO PRINT ON THE EQUIVALENT TO 24" X 36"; I.E. CADD SIZE D DRAWING OR THE EQUIVALENT TO 30"X 42"; I.E. CADD SIZE E DRAWING). THE DRAWINGS ASSOCIATED WITH THE PRELIMINARY SCHEDULE ARE NOT INCLUDED IN THE PAGE LIMITATION. Margins shall be no smaller than a half inch (1/2"), font face shall be Times New Roman or Arial, and font size shall be no smaller than 10-point font. Page is defined as a single sheet of paper with text on one side. Pages furnished for organizational purposes only, such as a cover page, tabs or separator pages or a table of contents are not included in the page limitation.



Note: Corporate certificates, Partnership agreements or Joint Venture Agreements, Letter of Commitment, CMW certification, and Licenses are also not included in page limitations.

Offerors shall place the following notification on the bottom of each page of their proposals: **“Source Selection Information – See FAR 2.101 and 3.104. Do not disclose any source selection information to any unauthorized person.”**

All information **must** be confined to the appropriate volume. The offeror should limit the proposal to the required information sufficient to provide the Government an adequate basis for evaluation. Offerors are responsible for including sufficient details, in a concise manner, to permit a complete and accurate evaluation of the proposal. Each volume of the proposal must contain a table of contents, summary section with a brief abstract of the volume, and the narrative discussion. Proprietary information must be clearly marked.

### **C. PROPOSAL SUBMISSION INSTRUCTIONS**

Proposals must be submitted electronically. The electronic submission must include Volume I, Volume II and Volume III as three separate files in PDF (or comparable) format, submitted to the following through the DoD SAFE (Secure Access File Exchange) site located at <https://safe.apps.mil> (Non-CAC Users). Submissions will be made to:

LTC Lester Gebski at [lester.s.gebski@usace.army.mil](mailto:lester.s.gebski@usace.army.mil) and  
Mr. Ryan K Gregory at [Ryan.K.Gregory@usace.army.mil](mailto:Ryan.K.Gregory@usace.army.mil)

**In order to submit a proposal, offerors must email Mr. Gregory and LTC Gebski at least four (4) calendar days prior to the proposal due date to request a DoD SAFE code. This code is required to upload and transmit proposals through the DoD SAFE website.**

Proposals are due no later than **November 22, 2021 by 4:30PM Eastern Standard Time (EST)**. This date shall be considered the proposal due date, after which proposal revisions will not be accepted.

Facsimile Proposals are not permitted. It is an offerors responsibility to ensure its proposal is received by the Government system by the date and time of the proposal deadline, e.g., undeliverable messages due to an offerors proposal size or IT issues are not the responsibility of the Government.

### **D. LATE PROPOSALS**

1. Any proposal, modification, or revision received by the Government after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the contracting officer determines that accepting

the late offer would not unduly delay the acquisition; and –

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

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

(iii) it is the only proposal received.

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

## E. SOLICITATION INQUIRIES

1. All inquiries regarding this solicitation are to be submitted via Bidder Inquiry. Telephone and email inquiries will not be accepted. Bidder Inquiry is a web-based program that allows bidders to post questions regarding the solicitation and view all questions by other bidders and responses by USACE. Bidder Inquiry can be accessed through ProjNet at <https://www.projnet.org/projnet/>.

a. Offerors shall only submit one question per inquiry. All inquiries containing multiple questions will be rejected.

b. Offerors will receive an acknowledgement of their question(s) via email, followed by an answer to their question(s) after it has been processed by our technical team. Offerors may view all bidder inquiries through ProjNet.

c. Inquiries must be submitted **no later than seven (7) calendar days prior** to the proposal due date. The inquiry system in ProjNet will be closed at that time and will not accept further inquiry postings.

2. To submit and review bid inquiries, prospective offerors will need to use the Bidder Inquiry Key presented below and follow the instructions listed below the key for access. The Bidder Inquiry Key is: **IV4T9W-84IZK5**

3. Specific Instructions for ProjNet Bid Inquiry Access:

a. From the ProjNet home page linked above, click on Quick Add on the upper right side of the screen.

b. Identify the Agency as USACE.

- c. Key. Enter the **Bidder Inquiry Key** listed above.
  - d. Email. Enter the email address you would like to use for communication.
  - e. Click Continue. A page will then open saying that a user account was not found and will ask you to create one using the provided form.
  - f. Enter your First Name, Last Name, Company, City, State, Phone, Email, Secret Question, Secret Answer, and Time Zone. Make sure to remember your Secret Question and Answer as they will be used from this point on to access the ProjNet system.
  - g. Click Add User. Once this is completed you are now registered within ProjNet and are currently logged into the system.
4. Submit questions or review questions and answers. A bidder who submits a question will receive an automated email notification that their question has been received. When an answer is posted to a question, the question and answer is then available for all other bidders to review.
5. For specific step-by-step for POSTING YOUR INQUIRIES, see the Reference link on the Contract Viewer.
6. For questions about the ProjNet-®, please contact the Call Center help desk USA toll free at 1-800-428-HELP, which operates from 8AM to 5PM (Central US time zone). ProjNet-® questions can also be emailed to the helpdesk at [staff@rcesupport.com](mailto:staff@rcesupport.com).
- The Government will ensure written responses to questions/inquiries from prospective offerors during the Question and Answer period do not conflict with information provided or required by an evaluation factor. If there is a conflict, the Government will issue an amendment and revise the factor to clear up any discrepancy.
7. An organized Site Visit is anticipated to be conducted in January 2022. Requirements for attending the Site Visit will be posted in advance to the Contract Opportunities website at <https://SAM.gov>.

See FAR Clause 52.236-27, SITE VISIT (CONSTRUCTION) (FEB 1995) – ALTERNATE I (FEB 1995) for information on the requirements which must be met in order to participate in the site visit. The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, Contractors are urged and expected to inspect the site where the work will be performed.

## **F. BASIS OF AWARD**

1. Award will be made to the offeror whose proposal represents the best overall value to the Government and has been determined to be responsible in accordance with FAR Subpart 9.1. The Best Value Tradeoff (BVTO) process (see FAR 15.101-1) will be used to determine which proposal provides the greatest overall benefit to the Government, in response to the requirements.

2. The Government intends to select one offeror for an award without discussions, but reserves to the right to hold discussions if the Government determines that to do so would be in its best interest. Therefore, an offerors proposal should contain the offerors best terms from a technical and pricing standpoint. The Government reserves the right to conduct discussions if it is determined by the Contracting Officer/Source Selection Authority (SSA) to be necessary.

## **G. RELATIVE IMPORTANCE OF THE EVALUATION FACTORS**

For evaluation purposes, Factor 1 – Construction Experience, and Factor 2 – Technical Approach are equal to one another, and when combined, are significantly more importance than Factor 3 – Past Performance. When combined, Factor 1 – Construction Experience, Factor 2 – Technical Approach and Factor 3 – Past Performance are significantly more important to the Factor 4 - Price aspect of an offerors proposal in the selection process.

In its evaluation of the offerors technical proposal, the Government may identify significant strengths, strengths, significant weakness, weaknesses, Uncertainty, and deficiencies, relying on the definitions below.

**Significant Strength** is an aspect of an offerors proposal that has appreciable merit or appreciably exceeds specified performance or capability requirements in a way that will be appreciably advantageous to the Government during contract performance.

**Strength** is an aspect of an offerors proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance.

**Significant Weakness** is a flaw in the proposal that appreciably increases the risk of unsuccessful contract performance.

**Weakness** is a flaw in the proposal that increases the risk of unsuccessful contract performance.

**Uncertainty** is any aspect of a non-cost/price factor proposal for which the intent of the offer is unclear (e.g. more than one way to interpret the offer or inconsistencies in the proposal indicating that there may have been an error, omission, or mistake).

**Deficiency** is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

A **risk** as it pertains to source selection is the potential for unsuccessful contract performance. The consideration of risk assesses the degree to which an offeror's proposed approach to achieving the technical factor or subfactor may involve risk of disruption of schedule, degradation of performance, the need for increased Government oversight, and the likelihood of unsuccessful contract performance.

There may be contained within the evaluation factors certain mandatory or minimum requirements to be met for evaluation. There are also contained within the described factors certain documents for submission. Failure to satisfy any mandatory or minimum requirement may result in a determination that a proposal is unacceptable. A final determination that an offer is unacceptable means that an award to the offeror involved cannot be made.

## **H. EVALUATION FACTORS**

The Government's evaluation includes an assessment of the following factors:

- FACTOR 1: CONSTRUCTION EXPERIENCE
- FACTOR 2: TECHNICAL APPROACH
- FACTOR 3: PAST PERFORMANCE
- FACTOR 4: PRICE

### **1. FACTOR 1: CONSTRUCTION EXPERIENCE**

#### **Proposal Submission Requirements:**

Offeror shall submit a portfolio of at least three and no more than five projects that demonstrate experience on military or commercial construction projects similar to the Design-Bid-Build Construction of Munitions Storage Area at an undisclosed location in the Hashemite Kingdom of Jordan, described in this RFP. To be considered similar, the projects must be in the same geographic region as the solicitation's requirements, with a contract value of \$5M or more, comparable in magnitude and scope to the construction being acquired by this RFP, i.e., construction of earth covered magazines, cast-in place concrete facilities, pre-engineered metal buildings, roadwork, fencing, and associated utilities.

Project magnitude may be defined as, but is not limited to the following: dollar amount, square feet, similar materials, similar trades or all of the above. Individual projects submitted do not have to meet all aspects of the definition of similar. However, the portfolio of projects submitted should collectively meet the definition of "similar" provided above.

To be considered, a project shall be at least 75% complete or completed within the last five years.

For the purposes of this evaluation the “same geographic region” shall include Jordan, Lebanon, Egypt, Kuwait, Qatar, Bahrain, Saudi Arabia, Oman, and the United Arab Emirates.

For similar work experience gained by the offeror while a subcontractor, the offeror should provide a description of their role as the subcontractor. The description shall include the type of work performed, the dollar value of the work performed, and the percentage of work completed. The description shall also include an explanation of why such experience is similar to this project, the prime contractor’s contract number, and contact information for the prime contractor and government or owner representative for the project.

If an offeror wishes to receive credit for the experience or past performance of a subcontractor or teaming partner, the offeror must submit a signed letter of commitment to use the proposed firm on the project, signed both by the subcontractor/teaming partner and the offeror. The commitment letter must be submitted even if the subcontractor/teaming partner is affiliated with the offeror (for example, the subcontractor/teaming partner is a subsidiary of a joint venture partner, or a subsidiary of a firm to which the joint venture partner is also a subsidiary).

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

- (a) Project Title
- (b) Location
- (c) Contract Number
- (d) Project Delivery Method: Indicate whether the project was Design/Build, Design/Bid/Build, or Design Only
- (e) Designer of Record

Using the Project Summary Form (Attachment 3) and the Past Performance Questionnaire (Form PPQ) (Attachment 4), the offeror **should** demonstrate experience in performing projects meeting or exceeding the requirements described below. Offerors **shall** qualify by submitting projects wherein the offeror performed as the Prime Contractor, or;

- (1) A subcontractor where they completed work relevant to the projects described below. If qualifying for work performed as a subcontractor, the offeror **shall** submit a letter from the prime contractor confirming what work specifically was completed by the offeror, or;

- (2) By leveraging the experience of a proposed major subcontractor. If qualifying for work based on a proposed subcontractor, the offeror **shall** submit a completed Letter of Commitment from the subcontractor.
- (3) By using work the offeror performed as a joint venture. The offeror may submit projects for evaluation in which it was a partner in a joint venture agreement. A copy of the joint venture agreement **shall** also be submitted with the proposal.

Ensure that the PPQs submitted for Factor 1 clearly describe the relevant characteristics of the project.

Offerors **should** submit recent projects that satisfy the requirements listed below. An individual project which satisfies multiple requirements listed below can be used to satisfy more than one required project. Individual projects which satisfy a single requirement listed below can also be used to satisfy each required project. The Government will not consider multiple smaller projects, such as individual task orders, which when combined would meet the minimum required size. Recent projects involving construction of the following facilities/projects to include:

- (1) Munitions Storage Area – Construction of a munitions storage area, to include earth covered magazines (igloos)
- (2) Construction of munitions support facilities (Ammo Maintenance, Precision Guided Munitions, Trailer Maintenance, etc.)
- (3) Supporting Infrastructure to include roadwork, fencing, and associated utilities

**The projects submitted for consideration in Factor 1 shall be the same projects submitted for evaluation in Factor 3.** The project description on the PPQ shall clearly describe the project. The Government will not assume any project characteristics that are not specifically identified and described. Using the PPQ form, the offeror shall describe how the project contained the elements described above and which project in paragraph b. is being met for Factor 1.

Offerors **shall** also provide a narrative, not to exceed twenty-five (25) pages, that outlines how their experience on prior projects will enable the offeror to successfully perform the requirements of the solicitation. The offeror should provide specific examples of projects they have performed, and how the elements and features of those projects pertain to the offerors ability to deal with construction challenges likely to be present on this project, and how these experiences will positively enhance its performance handling a design-bid-build project featuring deep foundations, high-rise steel structure, precast panels, anti-terrorism/force protection requirements.

For purposes of this portion of the evaluation, the focus is on the offerors prior experience in dealing with construction challenges, not on those project metrics required to conduct a past performance relevancy evaluation. A separate project relevancy analysis will be completed under the Past Performance factor.

The narrative **should** address the offerors experience with the following:

(a) Obtaining access for the offerors workforce to work areas similar to that of the solicitation project, and maintaining that access throughout the duration of the project.

(b) Hiring qualified laborers and maintaining a qualified workforce.

(c) Procurement of long lead time items.

(d) Staffing 24 hours a day, seven days a week operations or a reasonably similar schedule.

(e) Obtaining permits, such as fire protection, building installation, utilities, etc.

(f) Process improvements or innovative techniques utilized to address construction challenges.

(g) The Offerors plan to implement safety measures in response to the COVID-19 pandemic. The Offeror shall address testing, monitoring, training of the workforce, preventative measures to include PPE.

In its evaluation, the Government is focused on the offerors experience. If an offeror discusses experience of its proposed major subcontractor(s), an unequivocal letter of commitment signed by the subcontractor(s) must be included in the offerors proposal. If this requisite letter of commitment is not submitted, the prior experience of the major subcontractor(s) will not be considered. If the offeror is a JV, the offeror may discuss the experience of the JV and experience of any JV partner. If using the prior experience of the JV or a JV partner, a JV agreement must be provided. If the requisite JV Agreement is not provided, the government will not consider the information presented.

**Evaluation Procedures, Adjectival Ratings and Descriptions:**

The Government will evaluate the offerors narrative for the degree to which the offeror possesses experience that will enable it to successfully perform the work included in the solicitation. The Government will evaluate the information presented and its application to the work required by the solicitation, to determine whether the experience described by the offeror appreciably increases the likelihood of the offeror successfully performing the work contemplated by the solicitation.



Greater weight may be given to proposals that demonstrate prior experience in any of the following areas:

- Projects that include new construction of earth covered magazines (igloos)
- Projects that include munitions support facilities as described above
- Projects that demonstrate prior teaming experiences with significant subcontractors committed on this proposal
- Projects that demonstrate the offeror performing as the prime contractor
- Projects that demonstrate experience at military installations in Jordan

A single technical rating will be assigned to the prior experience of an offeror's proposal. The ratings include consideration of risks in conjunction with a proposal's significant strengths, strengths, weaknesses, significant weaknesses, uncertainties, and deficiencies. The factor evaluation will utilize the combined technical/risk ratings and the risk descriptions as follows:

<b>Table 1. Combined Technical/Risk Rating Method</b>		
<b>Color Rating</b>	<b>Adjectival Rating</b>	<b>Description</b>
<b>Blue</b>	<b>Outstanding</b>	Proposal indicates an exceptional approach and understanding of the requirements and contains multiple strengths, and risk of unsuccessful performance is low.
<b>Purple</b>	<b>Good</b>	Proposal indicates a thorough approach and understanding of the requirements and contains at least one strength, and risk of unsuccessful performance is low to moderate.
<b>Green</b>	<b>Acceptable</b>	Proposal meets requirements and indicates an adequate approach and understanding of the requirements, and risk of unsuccessful performance is no worse than moderate.
<b>Yellow</b>	<b>Marginal</b>	Proposal has not demonstrated an adequate approach and understanding of the requirements, and/or risk of unsuccessful performance is high.
<b>Red</b>	<b>Unacceptable</b>	Proposal does not meet requirements of the solicitation, and thus, contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable. Proposal is unawardable.

## **2. FACTOR 2: TECHNICAL APPROACH**

### **Proposal Submission Requirements:**

The Technical Approach portion of an offerors proposal will be limited to five (5) pages in length, not including registrations, licenses, letters of intent, or the Performance Distribution Statement. Information provided that exceeds the page limit will not be evaluated.

The offeror shall provide a detailed narrative that identifies the offerors understanding of the overall scope for the project and that describes its technical approach to completing the work. The narrative should identify all the major scope components of the project, including the critical components of the project. Additionally, offerors shall provide a discussion of the technical approach to the project that demonstrates not only an understanding of the geographic constraints, local labor market, laws, and other anticipated challenges, but also provides benefit to the project. Offerors should demonstrate a clear understanding of the following: use of local consultants and labor, potential material shortage, assembly of the administrative and technical staff, shipping and logistics (air, land, and sea), local labor and subcontractor markets, site security, local storage of materials, lay-down area(s), the unique requirements of the project, weather factors, and the use of a commissioning agent.

***Offerors Use of Subcontractors.*** The Government recognizes that completion of a project is often a team effort. An offeror that intends to utilize a major subcontractor (defined as a subcontractor who performs twenty percent (20%) or more of the total work at the project site) should submit one Letter of Commitment for each of the major subcontractors it plans to use. Each Letter of Commitment must (i) be written on company letterhead and addressed to the offeror; (ii) agree to a specific scope of work without caveats or disclaimers; and (iv) be executed by the subcontractor's authorized representative.

After award, the offeror shall not change major subcontractors for which it submitted a Letter of Commitment without the contracting officer's written approval. Approval will not be given unless the contracting officer considers the proposed substitute to be equal or better in all respects to the originally proposed major subcontractor and that the substitution is in the best interests of the Government.

The narrative should specifically address the following categories:

- a. Licensing: the offeror shall provide either:
  - i. a valid and current (e.g., not expired) copy of Jordan business registration documentation. If the offeror provides a Jordan business license that will expire prior to 5 February 2022, the proposal shall include the offerors supported plan to extend the Jordan business license;

**OR**

- ii. Plan to obtain a Jordan business license no later than 30 calendar days after contract award. This plan should explain the offerors understanding of the process to

obtain licensure in Jordan, including the expected processing time for obtaining a business license and/or registration.

b. Self-Performance: The awardee will be required to perform on the site and with its own organization, at least thirty percent (30%) of the total amount of work to be performed under the contract. The Performance Distribution Statement (Attachment 9), further clarifies how the Government interprets the self-performance requirement. The offeror should include with its proposal the completed Performance Distribution Statement, indicating its plans for self-performance, and the plans for its proposed major subcontractors.

c. Base Access: An offeror shall explain how it will comply with relevant base access procedures, such as:

i. Security requirements for access to Jordanian military installations.

ii. Obtaining passes and clearances for access to Jordanian military installations. The offeror shall provide (a) a copy of passes and clearances it intends to rely upon in gaining access to Jordanian military installations; OR if the offeror does not possess a valid pass or clearance, (b) the offerors plan to obtain it. This plan should explain the offerors understanding of the process to obtain the required base access passes and clearances.

iii. Plan to control access to the work site.

iv. Plan for obtaining base access for personnel, subcontractors, and construction materials and equipment, including an explanation of how the offeror will obtain base passes, the anticipated timeframe for obtaining base passes, and any known restrictions or heightened screening processes for certain foreign nationals seeking access to Jordanian military installations.

d. Permit Requirements: the offeror shall describe in detail its understanding of the Jordan permit requirements as they apply to this project and (1) provide a list of necessary permits applicable to this project, (2) a detailed plan to obtain the necessary permits, including its expected timeframe for obtaining these permits, and (3) if possible, evidence of obtaining applicable permits for similar past projects.

e. Recruitment: the offeror shall state the anticipated number of workers to be recruited, the skills they are expected to have, and the country or countries from which the contractor intends to recruit them. This narrative shall explain how the contractor intends to attract candidates and the recruitment strategy including the recruiter. The offeror should provide a sample recruitment agreement in English.

f. Organization: the offeror shall describe the management process that the offeror plans to use to manage this project. The plan shall provide a narrative on the project organization, defining the roles, responsibilities, and authority to be delegated to the

staff in each position. The plan shall discuss how work flows through the organization, including subcontractor efforts, and identify all of the major components of the team for the project, explaining how each component of the work will be integrated into the overall scope. Project titles and names used should match any resumes required elsewhere in this solicitation. The plan shall identify how the offeror will integrate the design team into the organization for the project, and explain the role the design team will be allotted in the decision-making process for the Project. The offeror shall provide an organizational chart showing the relationship between the offeror, on-site staff, subcontractors, QC personnel, safety personnel, and USACE.

g. Quality Control: the offeror shall provide information on its team's capabilities to assure quality control, including its quality control approach, corporate systems, and capabilities to maintain quality control of the construction. The narrative shall also provide information on how it will handle internal and external requests for information, shop drawings, submittal reviews, progress meetings, site visits, contract completion, closeout, as-built, and completion documentation

h. Required Materials: the offeror shall describe the proposed sourcing of specialized materials required for the intended work, specifically the structural steel required for the magazines as well as the blast doors. This narrative shall explain how the contractor intends to acquire the required specialized materials and transport them to the jobsite.

**Evaluation Criteria, Adjectival Ratings, and Descriptions:**

An offerors approach will be evaluated in its entirety to determine the offerors understanding of the requirements, inherent challenges that are specific to this project scope, schedule, and location, and its capability to execute the requirements of the solicitation.

The Government will evaluate proposals to determine the completeness and feasibility of an offerors management approach and its understanding of the overall scope of work and anticipated challenges. The Government will evaluate an offerors management approach based on the following aspects:

Licensing: The Government will consider the extent to which the offeror has proven (1) it holds a license in good standing which will permit the offeror to perform the work required within the period of performance; or (2) it understands the business license process and has clearly explained how it plans to obtain the business license necessary to perform the work required at Jordanian military installations. **NOTICE TO PROCEED (NTP) SHALL NOT BE ISSUED WITHOUT CURRENT LICENSING.**

Self-Performance: The Government will evaluate the percentage and type of work the offeror plans to self-perform at the project site with its own organization, as well as the percentage and type of work the offeror plans to perform by subcontractor. In so doing, the Government will consider whether the offerors plan presents potential risk to the successful completion of the project. As necessary, the Performance Distribution

Statement Sheet will be cross-referenced for consistency with the offerors cost breakdown sheet, as well as the submitted Letters of Commitment.

**Base Access:** The Government will evaluate the extent of an offerors understanding of the relevant security requirements for Jordanian military installations. The Government will evaluate the offerors plan to gain site access and base passes, for completeness, reasonableness, and feasibility. The Government will also consider whether the offeror has included in its proposal valid passes or clearances, or a complete and reasonable plan to obtain passes or clearances to allow the offeror to perform the required work.

**Permit Requirements:** The Government will evaluate the extent of an offerors understanding of the current Jordan permitting requirements as they apply to this project and the completeness of the offerors list of necessary permits applicable to this project. The Government will also consider whether the offeror has provided a complete and reasonable plan to obtain permits that will allow the offeror to perform the work required within the period of performance.

**Recruitment:** the Government will evaluate the offerors plan for recruitment for logic and ease of implementation, and whether the plan complies with FAR 52.222-50, Combatting Trafficking in Persons.

**Organization:** The Government will evaluate the extent to which an offerors plan for organization includes well defined organization and lines of authority; responsibility; communication; integration of design team; and tracking of schedules.

**Quality Control:** The Government will evaluate the offerors demonstrated understanding of the contractual requirements associated with quality control for cast-in place concrete. The Government will evaluate the completeness and reasonableness of the offerors quality control plan.

A single technical rating will be assigned to the Technical Approach of an offerors proposal. In rating the offeror, the Government will focus on the strengths, deficiencies, weaknesses, risks, and uncertainties indicated in the offerors proposal. The chart below explains the rating which will be applied to the Technical Approach portion of the offerors proposal, based on how well the offerors proposal meets the Technical Approach proposal submission requirements.

<b>Table 1. Combined Technical/Risk Rating Method</b>		
<b>Color Rating</b>	<b>Adjectival Rating</b>	<b>Description</b>
<b>Blue</b>	<b>Outstanding</b>	Proposal indicates an exceptional approach and understanding of the requirements and contains multiple strengths, and risk of unsuccessful performance is low.

<b>Purple</b>	<b>Good</b>	Proposal indicates a thorough approach and understanding of the requirements and contains at least one strength, and risk of unsuccessful performance is low to moderate.
<b>Green</b>	<b>Acceptable</b>	Proposal meets requirements and indicates an adequate approach and understanding of the requirements, and risk of unsuccessful performance is no worse than moderate.
<b>Yellow</b>	<b>Marginal</b>	Proposal has not demonstrated an adequate approach and understanding of the requirements, and/or risk of unsuccessful performance is high.
<b>Red</b>	<b>Unacceptable</b>	Proposal does not meet requirements of the solicitation, and thus, contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable. Proposal is unawardable.

### **3. FACTOR 3: PAST PERFORMANCE**

The Past Performance evaluation includes an assessment of an offerors probability of meeting the solicitation requirements and results in an assignment of a single performance confidence assessment rating based on an offerors past performance record.

For the purpose of this evaluation:

A “**recent**” project is defined as a construction project which (1) has been completed within the last five (5) years of the RFP issuance date, or (2) is currently under construction and at least 75% complete as of the RFP issuance date.

A “**relevant**” project is defined as a project with a similar scope and cost magnitude as the project that is the subject of this solicitation. In addition, whether a project is “recent” will be considered in determining the project’s relevance. Projects performed by the offeror as a prime contractor may be considered more “relevant” for the purpose of the Past Performance evaluation.

“**Similar scope**” To be considered similar, the projects must be in the same geographic region as the solicitation’s requirements, with a contract value of \$5M or more, comparable in magnitude and scope to the construction being acquired by this RFP, i.e., construction of earth covered magazines, cast-in place concrete facilities, pre-engineered metal buildings, roadwork, fencing, and associated utilities. Project magnitude may be defined as, but is not limited to the following: dollar amount, square feet, similar materials, similar trades or all of the above. Individual projects submitted do not have to meet all aspects of the definition of similar. However, the portfolio of projects submitted should collectively meet the definition of “similar” provided above.

For the purposes of this evaluation the “same geographic region” shall include Jordan, Lebanon, Egypt, Kuwait, Qatar, Bahrain, Saudi Arabia, Oman, and the United Arab Emirates.

“**Similar cost magnitude**” is defined as a project with a total contract value of at least \$5 million. Projects with a total contract value of between \$25 million and \$50 million will be considered to have a “more similar” cost magnitude, and accordingly, may be considered more relevant.

**Proposal Submission Requirements:**

The offeror shall submit past performance information for at least three but no more than five projects performed by the offeror. Additional projects submitted that exceed these limits will not be considered for evaluation.

**Submitted Projects**

An offeror may submit projects for evaluation for which it performed as a prime contractor, as part of a joint venture, or as a subcontractor.

A. If an offeror is a partnership or Joint Venture, the offeror may submit (1) projects for evaluation performed by the partnership or Joint Venture; and (2) projects performed by entities that comprise the partnership or Joint Venture. The Government will consider a submitted project performed by a partner or joint venture, if: (a) for that project, the offerors proposal describes the role of the partner or joint venture; and (b) the offerors proposal clearly identifies how the role of the partner or joint venture on the submitted project is relevant to the role the partner or joint venture will be performing on the solicitation project.

B. Past performance information submitted that related to projects performed by an offerors proposed subcontractors will not be evaluated, regardless of how much work the subcontractor will perform on the awarded contract.

C. Past performance information submitted that related to projects performed by the offeror for itself or for another member of its corporate team (e.g., a facility constructed by the offeror for a parent company) will not be evaluated.

An offeror shall provide an Past Performance Overview Sheet (Attachment 2). A separate Project Summary Form (Attachment 3), and Past Performance Questionnaire (PPQ) (Attachment 4) shall be provided for each project submitted in the Past Performance Overview Sheet.

The offeror should include a project description on the Project Summary Form that includes the project scope and cost magnitude, and which is detailed enough to permit an evaluation of project relevance, recency, and quality. The offeror should provide

details for any past performance problems encountered and the corrective actions taken for projects submitted in the appropriate space provided.

Also on the Project Summary Form, the offeror should provide the name and contact information of English-speaking references who have first-hand knowledge of the offerors past performance, and who are independent and willing and available to answer questions. References should be knowledgeable personnel within the contracting agency or entity that administers the contract such as the construction agent, owner, or Government representative. References may be asked to comment on specific aspects of the offerors performance, including: quality of construction, timeliness, management of the work, subcontractor management including timely payment to subcontractors or suppliers, safety, relations between owner and designer or contractor, level of support for such elements as as-built documentation, Operations and Maintenance (O&M) manuals, training, correcting design or construction errors, and warranty work. The offeror should notify the reference that he/she may be contacted for the purposes of the evaluation.

An offeror should obtain a client-completed Past Performance Questionnaire (PPQ) (Attachment 4) for each project submitted. If the offeror is unable to obtain a client-completed PPQ before the proposal closing date, the offeror should complete and submit with its proposal the first page of the PPQ (including blocks 5 and 6). If the client requests, completed PPQs may be submitted directly to the Government's point-of-contact, LTC Lester Gebski at [lester.s.gebski@usace.army.mil](mailto:lester.s.gebski@usace.army.mil) **prior** to the proposal closing date. Offerors may submit PPQs for submitted projects which were previously filled out by clients and used in previous proposal submissions for other projects. However, offerors shall not merely incorporate these PPQs into their proposals by reference.

In addition to the PPQs, the offeror is encouraged to submit any DD Form 2626 (Performance Evaluation (Construction)) and/or Contractor Performance Assessment Report (CPARS) for the projects submitted.

Past performance information such as awards, certificates, customer letters of commendation, and any other forms of performance recognition shall not be submitted, as this information will not be evaluated.

**FALSIFIED PAST PERFORMANCE INFORMATION (INCLUDING PPQs) MAY BE GROUNDS FOR DISQUALIFICATION OF AN OFFERORS PROPOSAL, REFERRAL OF THE OFFEROR FOR SUSPENSION OR DEBARMENT, AND REFERRAL OF THE OFFEROR TO THE APPROPRIATE CRIMINAL AUTHORITIES.**

#### **The Government's Right to Obtain and Use Past Performance Information**

While the Government is under no obligation to obtain past performance information not included in the offerors Past Performance proposal, the Government reserves the right to contact and interview references and clients submitted by an offeror, and to use any other means available in order to verify past performance



information. The Government reserves the right to obtain and use in its evaluation any past performance information, including information for projects not submitted by the offeror. The Government may obtain past performance information by reviewing relevant Government databases, other DoD or Government appraisal systems, or other sources. Other sources may include, but are not limited to, past performance information retrieved through the Past Performance Information Retrieval System (PPIRS) using all CAGE/DUNS numbers of team members (partnership, joint venture, teaming arrangement, or parent company/subsidiary/affiliate) identified in an offerors proposal; inquiries of owner representative(s); Federal Awardees Performance and Integrity Information System (FAPIIS); Electronic Subcontract Reporting System (eSRS); interviews with Government personnel; and any other known sources not provided by the offeror, including the personal knowledge of the Government personnel involved in the evaluation.

**Evaluation Procedures, Adjectival Ratings and Descriptions:**

The Past Performance evaluation considers three aspects (recency, relevance, and quality). The evaluation results in the assignment of a single Performance Confidence Rating for each offeror. This is the only formal "rating" applied to this factor.

**1. Recency:** The first aspect considered is the recency of an offerors past performance. The Government will consider whether each of the offerors submitted projects is "recently completed," as that term is defined above. More recent past performance will typically be a stronger predictor of future success and have more influence on the Performance Confidence assessment. Further, whether a project is "recent" will be considered in determining the project's relevance.

**2. Relevance:** The second aspect considered is the relevance of an offerors past performance. This evaluation involves a determination as to how relevant each submitted project is to the solicitation's effort, as the term "relevant" is defined above. Projects that are more "relevant" will typically be considered a stronger predictor of future success and have more influence on Performance Confidence assessment, compared to past performance submitted for projects of lesser relevance.

In arriving at the single Performance Confidence rating, the Government will consider how relevant each submitted project is to the efforts required in the solicitation. While the relevance consideration for each project is a significant contributor to the Performance Confidence rating, it is not a formal rating in and of itself. The following criteria will be used to establish the overall level of relevance of each individual offerors projects submitted for consideration of past performance.

**Table 2. Past Performance Relevancy Assessment**

Adjectival Rating	Description
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Very Relevant	Present/past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires.
Relevant	Present/past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires.
Somewhat Relevant	Present/past performance effort involved some of the scope and magnitude of effort and complexities this solicitation requires.
Not Relevant	Present/past performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires.

**3. Quality:** The third aspect considered is the quality of an offerors past performance. The Government will review the past performance information for those projects submitted by the offeror, in addition to any other projects considered by the Government, and make an overall determination as to how well the offeror performed. The Government will consider the context of the past performance information. The Government will also consider any general trends in the offerors performance. The Government reserves the right to consider any past performance information collected (including information for projects not submitted by the offeror, or which do not meet the solicitation's definition of "relevant") as part of determining the quality of the offerors performance history.

The Government will consider the credibility of the source of past performance information and may place a higher value on past performance information obtained from Government sources (for example, CPARS, other agency performance databases, or personal knowledge of Government employees that have worked closely with the offeror).

Performance Confidence Assessment. After the Government assesses recency, relevance, and quality, it will assign a Performance Confidence rating. This rating will be expressed as a degree of confidence in the offerors ability to successfully accomplish the work required in the solicitation, based on the offerors record of recency, relevance, and quality of performance. In arriving at a single Performance Confidence assessment, the Government will place the subjective weight on these three elements that it deems appropriate as part of evaluating each offerors proposal.

The Government will use the following criteria in assigning the Performance Confidence rating:

<b>Table 3: Performance Confidence Assessments Rating Method</b>	
<b>Adjectival Rating</b>	<b>Description</b>

Substantial Confidence	Based on the offerors recent/relevant performance record, the Government has a high expectation that the offeror will <u>successfully perform the required effort.</u>
Satisfactory Confidence	Based on the offerors recent/relevant performance record, the Government has a reasonable expectation that the offeror will <u>successfully perform the required effort.</u>
Neutral Confidence	No recent/relevant performance record is available or the offerors performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned. The offeror may not be evaluated favorably or unfavorably on the factor of past performance.
Limited Confidence	Based on the offerors recent/relevant performance record, the Government has a low expectation that the offeror will <u>successfully perform the required effort.</u>
No Confidence	Based on the offerors recent/relevant performance record, the Government has no expectation that the offeror will be able to <u>successfully perform the required effort.</u>

In accordance with FAR 15.305(a)(2)(iv), in the case of an offeror for which there is no information on relevant past performance or where past performance is not available, the offeror may not be evaluated favorably or unfavorably on the past performance factor. In this case, the offerors past performance is unknown and assigned a performance confidence rating of "neutral." The Source Selection Authority (SSA) may regard a rating of Neutral Confidence less favorably than a rating of Substantial Confidence or Satisfactory Confidence where those ratings may be associated with relatively lower risk of unsuccessful performance, and where a Neutral Confidence rating may not facilitate a risk assessment.

#### **4. FACTOR 4: PRICE**

##### **Proposal Submission Requirements:**

Price proposals shall include the following:

- a. Signed *Solicitation, Offer, and Award* (SF 1442) with blocks 14-20c completed, including acknowledgment of all amendments.
- b. Completed SF 1442, Section 00 10 00, CLIN Schedule. All Contract Line Item Numbers (CLINs) shall be completed with unit price, quantity, and extended price. All extensions of the unit prices shown will be subject to verification. In case of discrepancy between the unit price and the extended price, the unit price will govern.
- c. Completed Proposal Schedule and Cost Breakdown Sheet (Attachment 5) in an Excel format. Ensure figures and totals match Section 00 10 00, CLIN Schedule. This supplemental information may be used to aid the Government in determining

the fairness and reasonableness of an offerors proposed price. The total price reflected on the supplemental price breakdown sheet should correspond to the price submitted on the CLIN schedule. Any discrepancies could be considered a deficiency and result in an incomplete proposal evaluation.

Offerors should note that the Government intends to award the contract without entering into discussions or price negotiations. **Therefore, offerors should submit their best and final price for consideration.**

**Evaluation Procedures and Descriptions:**

The offerors price proposal is evaluated through price analysis techniques as described in FAR Part 15. The Government will evaluate the offerors price proposal in order to identify risks to the Government based upon demonstration that:

- a. The price proposal is **complete**: To be complete, the offeror shall provide all data that is requested to evaluate the price. The Government will assess the extent to which the proposed prices comply with the content and format requirements set forth in this solicitation.
- b. The price proposal is **balanced**. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated. An offerors proposal may be unacceptable if it is determined that the lack of balance poses an unacceptable risk to the Government.
- c. The price proposal is **reasonable**. For a price to be reasonable, it shall represent a price that provides best value to the Government when consideration is given based upon comparison with the Independent Government Cost Estimate (IGCE) and to prices in the market (market conditions may be evidenced by other competitive proposals). Consideration is also given to the technical and functional capabilities of the offeror as compared to its price.

Price evaluations will not result in an assigned adjectival rating. Contract line items will be analyzed to determine whether unit prices proposed for the work to be performed reflect the offerors understanding of the solicitation requirements and are consistent with the offerors technical proposal. Offerors are cautioned to distribute direct costs, such as, material, labor, equipment, etc. and indirect costs, such as, job overhead, home office overhead, bonding, etc., to the appropriate contract line items. Both parties shall presume that field overhead costs through the proposed contract duration are inclusive in the offered price. Price proposals that are incomplete, unbalanced, or unreasonable may be considered unacceptable.

CLAUSES INCORPORATED BY REFERENCE

52.204-7	System for Award Management	OCT 2018
52.204-16	Commercial and Government Entity Code Reporting	AUG 2020
52.204-22	Alternative Line Item Proposal	JAN 2017
52.214-34	Submission Of Offers In The English Language	APR 1991
52.214-35	Submission Of Offers In U.S. Currency	APR 1991
52.215-1	Instructions to Offerors--Competitive Acquisition	JAN 2017
52.217-5	Evaluation Of Options	JUL 1990
252.204-7004	Antiterrorism Awareness Training for Contractors.	FEB 2019
252.204-7019	Notice of NIST SP 800-171 DoD Assessment Requirements	NOV 2020
252.215-7008	Only One Offer	JUL 2019
252.215-7012	Requirements for Submission of Proposals via Electronic Media.	JAN 2018
252.215-7013	Supplies and Services Provided by Nontraditional Defense Contractors.	JAN 2018

#### CLAUSES INCORPORATED BY FULL TEXT

##### 52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a Firm Fixed Price contract resulting from this solicitation.

(End of provision)

#### CLAUSES INCORPORATED BY FULL TEXT

##### 52.217-4 EVALUATION OF OPTIONS EXERCISED AT TIME OF CONTRACT AWARD (JUN 1988)

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 the total price for the basic requirement together with any option(s) exercised at the time of award.

(End of provision)

#### CLAUSES INCORPORATED BY FULL TEXT

##### 52.233-2 SERVICE OF PROTEST (SEP 2006)

- (a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from

**Mr. Ryan K. Gregory**  
**Procuring Contracting Officer**

U.S. Army Corps of Engineers (USACE), Transatlantic Middle East District (TAM)  
201 Prince Frederick Drive  
Winchester, VA 22602

(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) b An organized site visit has been tentatively scheduled for on or about 12-January-2022. Participants who are interested in participating are required to submit an application package to USACE for processing. Instructions for the application package are posted on <https://SAM.gov>. No more than two personnel from each company are allowed to participate in the site visit.

Any questions related to this topic shall be submitted via email to both of the USACE point of contacts identified below:

MAJ Joshua M. Hayes at [joshua.m.haynes@usace.army.mil](mailto:joshua.m.haynes@usace.army.mil) and  
Mr. Steven J. McNamara at [Steven.J.McNamara@usace.army.mil](mailto:Steven.J.McNamara@usace.army.mil)

(End of provision)

#### CLAUSES INCORPORATED BY FULL TEXT

#### 52.236-28 PREPARATION OF PROPOSALS--CONSTRUCTION (OCT 1997)

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

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

(1) Lump sum price;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

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

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

(End of provision)

#### CLAUSES INCORPORATED BY FULL TEXT

##### 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):

FAR at <https://www.acquisition.gov/>

DFARS at <https://www.acquisition.gov/dfars>

Class Deviations at [https://www.acq.osd.mil/dpap/dars/class\\_deviations.html](https://www.acq.osd.mil/dpap/dars/class_deviations.html)

USACE Acquisition Instruction (UAI) Version 5, Effective 03 June 2019, Update 1 dated 10 April 2020.

(End of provision)

##### 52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

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

(b) The use in this solicitation of any [Department of Defense Federal Acquisition Regulation Supplement](#) (48 CFR Chapter [Chapter 2](#)) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of provision)

Section 00 45 00 - Representations and Certifications

REPRESENTATIONS AND CERTS

**A. CORPORATE CERTIFICATE**

If the proposal is submitted by a corporation, the Corporate Certificate below must be submitted. If the proposal is submitted by a partnership, the Authority to Bind Partnership below must be completed and a copy of the partnership agreement included with the proposal. If the proposal is submitted by a Joint Venture, the Corporate Certificate below must be completed by each member of the Joint Venture and a copy of the Joint Venture Agreement showing the percentage of ownership of each firm included with the proposal.

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ (Title) of the corporation named as Proposer/Contractor herein; that \_\_\_\_\_, who signed this proposal/contract on behalf of the Proposer/Contractor was then \_\_\_\_\_ (Title) of said corporation; that said proposal/contract was duly signed for and on behalf of said corporation by authority of its governing body and within the scope of its corporate powers.

\_\_\_\_\_ (Corporate Seal) (Signature)

**B. AUTHORITY TO BIND PARTNERSHIP**

This is to certify that the names and signatures of all partners are listed below and that the person signing the proposal had authority to actually bind the partnership pursuant to its partnership agreement. Each of the partners individually has full authority to enter into and execute contractual instruments on behalf of said partnership, with the United States of America except as follows: (State "none" or describe limitations, if any). This authority shall remain in full force and effect until such time as the revocation of authority by any cause whatsoever has been furnished in writing to and acknowledged by the Contracting Officer.

Names and signatures of all partners:

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

(End of Certification)

**C. DEFENSE BASE ACT (DBA INSURANCE)**

The mandatory DBA insurance requirement on previous USACE contracts through the Continental Insurance Company (CAN) is removed in its entirety and is converted to commercially available DBA insurance coverage from carriers and self-insured employers authorized by the Department of Labor (DOL). The DOL table of authorized carriers and self-insured employers is available at: <http://www.dol.gov/owcp/dlhwc/lscarrier.htm> and is the responsibility of the offeror to obtain updated information from the DOL.

**CLAUSES INCORPORATED BY REFERENCE**



52.204-20	Predecessor of Offeror	AUG 2020
52.209-11	Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law	FEB 2016
52.229-12	Tax on Certain Foreign Procurements	FEB 2021
252.225-7974 (Dev)	Representation Regarding Business Operations with the Maduro Regime (DEVIATION 2020-O0005)	FEB 2020
252.232-7016	Notice of Progress Payments or Performance-Based Payments	APR 2020

#### CLAUSES INCORPORATED BY FULL TEXT

##### 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS (JAN 2020)

- (a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 236220.
- (2) The small business size standard is \$39,500,000.
- (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)(1) If the provision at 52.204-7, System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.
- (2) If the provision at 52.204-7, System for Award Management, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:
- (     ) Paragraph (d) applies.
- (     ) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.
- (c) (1) The following representations or certifications in SAM are applicable to this solicitation as indicated:
- (i) 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—
- (A) The acquisition is to be made under the simplified acquisition procedures in Part 13;
- (B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or
- (C) The solicitation is for utility services for which rates are set by law or regulation.
- (ii) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) 52.203-18, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements--Representation. This provision applies to all solicitations.

(iv) 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the provision at 52.204-7, System for Award Management.

(v) 52.204-5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(vi) 52.204-26, Covered Telecommunications Equipment or Services--Representation. This provision applies to all solicitations.

(vii) 52.209-2; Prohibition on Contracting with Inverted Domestic Corporations--Representation.

(viii) 52.209-5; Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(ix) 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.

(x) 52.214-14, Place of Performance--Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(xi) 52.215-6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(xii) 52.219-1, Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(xiii) 52.219-2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(xiv) 52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222-26, Equal Opportunity.

(xv) 52.222-25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222-26, Equal Opportunity.

(xvi) 52.222-38, Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

(xvii) 52.223-1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or include the clause at 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xviii) 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA- designated items.

(xix) 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals--Representation. This provision applies to solicitations that include the clause at 52.204-7.)

(xx) 52.225-2, Buy American Certificate. This provision applies to solicitations containing the clause at 52.225-1.

(xxi) 52.225-4, Buy American--Free Trade Agreements--Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at 52.225- 3.

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$83,099, the provision with its Alternate II applies.

(D) If the acquisition value is \$83,099 or more but is less than \$100,000, the provision with its Alternate III applies.

(xxii) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-5.

(xxiii) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan--Certification. This provision applies to all solicitations.

(xxiv) 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certification. This provision applies to all solicitations.

(xxv) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

(2) The following representations or certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

(i) 52.204-17, Ownership or Control of Offeror.

(ii) 52.204-20, Predecessor of Offeror.

(iii) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.

(iv) 52.222-48, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Certification.

(v) 52.222-52 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Certification.

(vi) 52.223-9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

(vii) 52.227-6, Royalty Information.

(A) Basic.

(B) Alternate I.

(viii) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

(d) The Offeror has completed the annual representations and certifications electronically in SAM accessed through <https://www.sam.gov>. After reviewing the SAM information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [ offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause	Title	Date	Change
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Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on SAM.

(End of provision)

52.204-24 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (OCT 2020)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at 52.204-26, Covered Telecommunications Equipment or Services--Representation, or in paragraph (v)(2)(i) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Items. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at 52.204-26, or in paragraph (v)(2)(ii) of the provision at 52.212-3.

(a) Definitions. As used in this provision-

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to--

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

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

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to--

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

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

(c) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services."

(d) Representations. The Offeror represents that--

(1) It  will,  will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that--

It  does,  does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(e) Disclosures.

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment--

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services--

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment--

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services--

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)

## 52.209-7 INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)

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

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

Federal contracts and grants with total value greater than \$10,000,000 means--

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

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

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

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

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

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

- (A) The payment of a monetary fine or penalty of \$5,000 or more; or
- (B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

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

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

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

(End of provision)

52.222-56 CERTIFICATION REGARDING TRAFFICKING IN PERSONS COMPLIANCE PLAN (OCT 2020)

(a) The term "commercially available off-the-shelf (COTS) item," is defined in the clause of this solicitation entitled "Combating Trafficking in Persons" (FAR clause 52.222-50).

(b) The apparent successful Offeror shall submit, prior to award, a certification, as specified in paragraph (c) of this provision, for the portion (if any) of the contract that--

(1) Is for supplies, other than commercially available off-the-shelf items, to be acquired outside the United States, or services to be performed outside the United States; and

(2) Has an estimated value that exceeds \$550,000.

(c) The certification shall state that--

(1) It has implemented a compliance plan to prevent any prohibited activities identified in paragraph (b) of the clause at 52.222-50, Combating Trafficking in Persons, and to monitor, detect, and terminate the contract with a subcontractor engaging in prohibited activities identified at paragraph (b) of the clause at 52.222-50, Combating Trafficking in Persons; and

(2) After having conducted due diligence, either--

(i) To the best of the Offeror's knowledge and belief, neither it nor any of its proposed agents, subcontractors, or their agents is engaged in any such activities; or

(ii) If abuses relating to any of the prohibited activities identified in 52.222-50(b) have been found, the Offeror or proposed subcontractor has taken the appropriate remedial and referral actions.

(End of provision)

252.203-7005 REPRESENTATION RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (NOV 2011)

(a) Definition. Covered DoD official is defined in the clause at 252.203-7000, Requirements Relating to Compensation of Former DoD Officials.

(b) By submission of this offer, the offeror represents, to the best of its knowledge and belief, that all covered DoD officials employed by or otherwise receiving compensation from the offeror, and who are expected to undertake activities on behalf of the offeror for any resulting contract, are presently in compliance with all post-employment restrictions covered by 18 U.S.C. 207, 41 U.S.C. 2101-2107, and 5 CFR parts 2637 and 2641, including Federal Acquisition Regulation 3.104-2.

(End of provision)



## 252.204-7007 ALTERNATE A, ANNUAL REPRESENTATIONS AND CERTIFICATIONS (DEC 2019)

Substitute the following paragraphs (b), (d) and (e) for paragraphs (b) and (d) of the provision at FAR 52.204-8:

(b)(1) If the provision at FAR 52.204-7, System for Award Management, is included in this solicitation, paragraph (e) of this provision applies.

(2) If the provision at FAR 52.204-7, System for Award Management, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (e) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:

(i) Paragraph (e) applies.

(ii) Paragraph (e) does not apply and the Offeror has completed the individual representations and certifications in the solicitation.

(d)(1) The following representations or certifications in the SAM database are applicable to this solicitation as indicated:

(i) 252.204-7016, Covered Defense Telecommunications Equipment or Services--Representation. Applies to all solicitations.

(ii) 252.209-7003, Reserve Officer Training Corps and Military Recruiting on Campus--Representation. Applies to all solicitations with institutions of higher education.

(iii) 252.216-7008, Economic Price Adjustment--Wage Rates or Material Prices Controlled by a Foreign Government. Applies to solicitations for fixed-price supply and service contracts when the contract is to be performed wholly or in part in a foreign country, and a foreign government controls wage rates or material prices and may during contract performance impose a mandatory change in wages or prices of materials.

(iv) 252.225-7042, Authorization to Perform. Applies to all solicitations when performance will be wholly or in part in a foreign country.

(v) 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services--Representations. Applies to solicitations for the acquisition of commercial satellite services.

(vi) 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism. Applies to all solicitations expected to result in contracts of \$150,000 or more.

(vii) 252.229-7012, Tax Exemptions (Italy)--Representation. Applies to solicitations when contract performance will be in Italy.

(viii) 252.229-7013, Tax Exemptions (Spain)--Representation. Applies to solicitations when contract performance will be in Spain.

(ix) 252.247-7022, Representation of Extent of Transportation by Sea. Applies to all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold.

(2) The following representations or certifications in SAM are applicable to this solicitation as indicated by the Contracting Officer: [Contracting Officer check as appropriate.]

X (i) 252.209-7002, Disclosure of Ownership or Control by a Foreign Government.

\_\_\_ (ii) 252.225-7000, Buy American--Balance of Payments Program Certificate.

\_\_\_ (iii) 252.225-7020, Trade Agreements Certificate.

\_\_\_ Use with Alternate I.

X (iv) 252.225-7031, Secondary Arab Boycott of Israel.

\_\_\_ (v) 252.225-7035, Buy American--Free Trade Agreements--Balance of Payments Program Certificate.

\_\_\_ Use with Alternate I.

\_\_\_ Use with Alternate II.

\_\_\_ Use with Alternate III.

\_\_\_ Use with Alternate IV.

\_\_\_ Use with Alternate V.

\_\_\_ (vi) 252.226-7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities.

(e) The offeror has completed the annual representations and certifications electronically via the SAM Web site at <https://www.acquisition.gov/>. After reviewing the SAM database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in FAR 52.204-8(c) and paragraph (d) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below \_\_\_ [offeror to insert changes, identifying change by provision number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR/DFARS Clause #	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications located in the SAM database.

(End of provision)

Section 00 70 00 - Conditions of the Contract

## INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	N/A	Government	N/A	Government
0002	N/A	N/A	N/A	Government
0003	N/A	N/A	N/A	Government
0004	N/A	N/A	N/A	Government
0005	N/A	N/A	N/A	Government
0006	N/A	N/A	N/A	Government
0007	N/A	N/A	N/A	Government
0008	N/A	N/A	N/A	Government
0009	N/A	N/A	N/A	Government
0010	N/A	N/A	N/A	Government
0011	N/A	N/A	N/A	Government
0012	N/A	N/A	N/A	Government
0013	N/A	N/A	N/A	Government
0014	N/A	N/A	N/A	Government
0015	N/A	N/A	N/A	Government

## Section 00 72 00 - General Conditions

00 72 00**52.228-15 -- Performance and Payment Bonds -- Construction (Oct 2010)**

(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 \$150,000 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 **10** 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 **10** 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 **10** 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  
3700 East West Highway, Room 6F01  
Hyattsville, MD 20782  
Or via the internet at <http://www.fms.treas.gov/c570/>.

(e) Notice of subcontractor waiver of protection (40 U.S.C. 3133(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of Clause)

## CLAUSES INCORPORATED BY REFERENCE

52.202-1	Definitions	JUN 2020
52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	MAY 2014
52.203-6	Restrictions On Subcontractor Sales To The Government	JUN 2020
52.203-7	Anti-Kickback Procedures	JUN 2020
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	MAY 2014
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity	MAY 2014
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	JUN 2020
52.203-13	Contractor Code of Business Ethics and Conduct	JUN 2020
52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights	JUN 2020
52.204-2 Alt II	Security Requirements (MAR 2021) - Alternate II	APR 1984
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper	MAY 2011
52.204-9	Personal Identity Verification of Contractor Personnel	JAN 2011
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	JUN 2020
52.204-18	Commercial and Government Entity Code Maintenance	AUG 2020
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities.	JUL 2018
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.	AUG 2020
52.209-10	Prohibition on Contracting With Inverted Domestic Corporations	NOV 2015
52.215-2	Audit and Records--Negotiation	JUN 2020
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data -- Modifications	JUN 2020
52.217-4	Evaluation Of Options Exercised At The Time Of Contract Award	JUN 1988
52.222-21	Prohibition Of Segregated Facilities	APR 2015
52.222-27	Affirmative Action Compliance Requirements for Construction	APR 2015
52.222-56	Certification Regarding Trafficking in Persons Compliance Plan.	OCT 2020
52.223-3	Hazardous Material Identification And Material Safety Data	FEB 2021
52.223-18	Encouraging Contractor Policies To Ban Text Messaging While Driving	JUN 2020
52.228-4	Workers' Compensation and War-Hazard Insurance Overseas	APR 1984
52.228-15 (Dev)	Performance and Payment Bonds-Construction. (Deviation 2020-O0016)	JUN 2020
52.232-39	Unenforceability of Unauthorized Obligations	JUN 2013
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	DEC 2013
52.233-1	Disputes	MAY 2014
52.233-3	Protest After Award	AUG 1996
52.233-4	Applicable Law for Breach of Contract Claim	OCT 2004

52.236-8	Other Contracts	APR 1984
52.236-26	Preconstruction Conference	FEB 1995
52.242-13	Bankruptcy	JUL 1995
52.253-1	Computer Generated Forms	JAN 1991
252.201-7000	Contracting Officer's Representative	DEC 1991
252.203-7003	Agency Office of the Inspector General	AUG 2019
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting	DEC 2019
252.204-7018	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services	JAN 2021
252.222-7006	Restrictions on the Use of Mandatory Arbitration Agreements	DEC 2010
252.225-7040	Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States	OCT 2015
252.232-7004 (Dev)	DoD Progress Payment Rates (DEVIATION 2020-O0010)	MAR 2020
252.236-7008	Contract Prices-Bidding Schedules	DEC 1991
252.236-7010	Overseas Military Construction--Preference for United States Firms	JAN 1997
252.236-7013	Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers	JUN 2013
252.246-7004	Safety of Facilities, Infrastructure, and Equipment for Military Operations	OCT 2010

#### CLAUSES INCORPORATED BY FULL TEXT

##### 52.204-2 SECURITY REQUIREMENTS (MAR 2021) - ALTERNATE II (APR 1984)

(a) This clause applies to the extent that this contract involves access to information classified "Confidential," "Secret," or "Top Secret."

(b) The Contractor shall comply with (1) the Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (32 CFR part 117); and (2) any revisions to that manual, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this contract.

(d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information.

(e) The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

(End of Clause)

## 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)

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

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

Registered in the System for Award Management (SAM) means that--

- (1) The Contractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into SAM;
- (2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in SAM;
- (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and
- (4) The Government has marked the record ``Active".

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

- (1) Data collected from prospective Federal awardees required for the conduct of business with the Government;
- (2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and
- (3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

Unique entity identifier means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

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

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

(d)(1)(i) If a Contractor has legally changed its business name or ``doing business as" name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the Contractor shall provide the

responsible Contracting Officer a minimum of one business day's written notification of its intention to--

(A) Change the name in SAM;

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

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

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

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

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

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

(End of clause)

## CLAUSES INCORPORATED BY FULL TEXT

### 52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014)

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

(End of clause)

### 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016)

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



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

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

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

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

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

(b) Safeguarding requirements and procedures.

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

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

(v) Identify information system users, processes acting on behalf of users, or devices.

(vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.

(vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

(viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

(x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

- (xii) Identify, report, and correct information and information system flaws in a timely manner.
  - (xiii) Provide protection from malicious code at appropriate locations within organizational information systems.
  - (xiv) Update malicious code protection mechanisms when new releases are available.
  - (xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.
- (2) Other requirements. This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.
- (c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

(End of clause)

#### 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUN 2020)

- (a) Definition. Commercially available off-the-shelf (COTS) item, as used in this clause--
- (1) Means any item of supply (including construction material) that is--
- (i) A commercial item (as defined in paragraph (1) of the definition in Federal Acquisition Regulation (FAR) 2.101);
  - (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
- (b) The Government suspends or debar Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of the threshold specified in FAR 9.405-2(b) on the date of subcontract award, with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.
- (c) The Contractor shall require each proposed subcontractor whose subcontract will exceed the threshold specified in FAR 9.405-2(b) on the date of subcontract award, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

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

- (1) The name of the subcontractor.
- (2) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

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

- (1) Exceeds the threshold specified in FAR 9.405-2(b) on the date of subcontract award; and
- (2) Is not a subcontract for commercially available off-the-shelf items.

(End of clause)

#### 52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)

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

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

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

- (i) Government personnel and authorized users performing business on behalf of the Government; or
- (ii) The Contractor, when viewing data on itself; and

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

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

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

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

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

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

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

(End of clause)

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

The Contractor shall be required to (a) commence work under this contract within (1) 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 .Eight hundred seventy (870) calendar days. The time stated for completion shall include final cleanup of the premises.

(End of clause)

#### 52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (SEP 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of \$4,353.00 for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

### CLAUSES INCORPORATED BY FULL TEXT

#### 52.211-13 TIME EXTENSIONS (SEP 2000)

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)

## CLAUSES INCORPORATED BY FULL TEXT

### 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.

## CLAUSES INCORPORATED BY FULL TEXT

### 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall--

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

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

(End of clause)

52.217-7 OPTION FOR INCREASED QUANTITY--SEPARATELY PRICED LINE ITEM (MAR 1989)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within ninety (90) calendar days from full Notice to Proceed (NTP). Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

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

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

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

Goals for minority participation for each trade	Goals for female participation for each trade
Not applicable to this Solicitation	Not applicable to this Solicitation

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 the **Kingdom of Jordan**

(End of provision)

#### 52.222-26 EQUAL OPPORTUNITY (SEPT 2016) ALTERNATE I (FEB 1999)

Notice. The following terms of this clause are waived for this contract: **Notice. The following terms of this clause are waived for this contract: Contracts are exempt from the requirements of E.O. 11246 for work performed outside the United States by employees who were not recruited within the United States. .**

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

Compensation means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

Compensation information means the amount and type of compensation provided to employees or offered to applicants, including, but not limited to, the desire of the Contractor to attract and retain a particular employee for the value the employee is perceived to add to the Contractor's profit or productivity; the availability of employees with like skills in the marketplace; market research about the worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Contractor decisions, statements and policies related to setting or altering employee compensation.

Essential job functions means the fundamental job duties of the employment position an individual holds. A job function may be considered essential if--

- (1) The access to compensation information is necessary in order to perform that function or another routinely assigned business task; or
- (2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

Gender identity has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

Sexual orientation has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

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

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

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

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

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

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

(5)(i) The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(ii) The Contractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by—

(A) Incorporation into existing employee manuals or handbooks; and

(B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall send, to each labor union or representative of workers with which it has a collective



bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

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

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

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

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR part 60-1.

(End of clause)

## 52.222-29 NOTIFICATION OF VISA DENIAL (APR 2015)

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

Gender identity has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

Sexual orientation has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

(b) Requirement to notify. (1) It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, sexual orientation, gender identity, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10).

(2) The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW., Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, sexual orientation, gender identity, or national origin of the employee or potential employee.

(End of clause)

#### 52.222-50 COMBATING TRAFFICKING IN PERSONS (OCT 2020)

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

Agent means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

Coercion means--

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

Commercially available off-the-shelf (COTS) item means--

- (1) Any item of supply (including construction material) that is--
  - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
  - (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Employee means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

Forced Labor means knowingly providing or obtaining the labor or services of a person--

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

Involuntary servitude includes a condition of servitude induced by means of--

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

Recruitment fees means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for--

(i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;

(ii) Advertising;

(iii) Obtaining permanent or temporary labor certification, including any associated fees;

(iv) Processing applications and petitions;

(v) Acquiring visas, including any associated fees;

(vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(viii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;

(xi) Transportation and subsistence costs--

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xii) Security deposits, bonds, and insurance; and

(xiii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is--

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to--

(A) Agents;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/affiliates of the employer;

(F) Any agent or employee of such entities; and

(G) Subcontractors at all tiers.

Severe forms of trafficking in persons means--

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Policy. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not--

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract;
- (3) Use forced labor in the performance of the contract;
- (4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;
- (5)(i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;
- (ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;
- (6) Charge employees or potential employees recruitment fees;
- (7)(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment--
  - (A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or
  - (B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that--
    - (ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is--
      - (A) Legally permitted to remain in the country of employment and who chooses to do so; or
      - (B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;
    - (iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.
- (8) Provide or arrange housing that fails to meet the host country housing and safety standards; or
- (9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days

prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) Contractor requirements. The Contractor shall--

(1) Notify its employees and agents of--

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) Notification.

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of--

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.

(e) Remedies. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in--

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(7) Suspension or debarment.

(f) Mitigating and aggravating factors. When determining remedies, the Contracting Officer may consider the following:

(1) Mitigating factors. The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) Aggravating factors. The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) Full cooperation. (1) The Contractor shall, at a minimum--

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not--

(i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Contractor from--

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) Compliance plan. (1) This paragraph (h) applies to any portion of the contract that--

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$550,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate--

(i) To the size and complexity of the contract; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) Minimum requirements. The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees and potential employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at [help@befree.org](mailto:help@befree.org).

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee or potential employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) Posting.

(i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) Certification. Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that--

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either--

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) Subcontracts. (1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h)



of this clause apply only to any portion of the subcontract that--

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$550,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

(End of clause)

#### 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2021)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>.

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

(End of clause)

#### CLAUSES INCORPORATED BY FULL TEXT

#### 52.225-14 INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (FEB 2000)

In the event of inconsistency between any terms of this contract and any translation into another language, the English language meaning shall control.

(End of clause)

#### CLAUSES INCORPORATED BY FULL TEXT

## 52.228-2 ADDITIONAL BOND SECURITY (OCT 1997)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if--

- (a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government.
- (b) Any surety fails to furnish reports on its financial condition as required by the Government;
- (c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or
- (d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

(End of clause)

## 52.228-3 WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT) (JUL 2014)

(a) The Contractor shall--

- (1) Before commencing performance under this contract, establish provisions to provide for the payment of disability compensation and medical benefits to covered employees and death benefits to their eligible survivors, by purchasing workers' compensation insurance or qualifying as a self-insurer under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932) as extended by the Defense Base Act (42 U.S.C. 1651, et seq.), and continue to maintain provisions to provide such Defense Base Act benefits until contract performance is completed;
  - (2) Within ten days of an employee's injury or death or from the date the Contractor has knowledge of the injury or death, submit Form LS-202 (Employee's First Report of Injury or Occupational Illness) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 930(a), 20 CFR 702.201 to 702.203);
  - (3) Pay all compensation due for disability or death within the time frames required by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914, 20 CFR 702.231 and 703.232);
  - (4) Provide for medical care as required by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 907, 20 CFR 702.402 and 702.419);
  - (5) If controverting the right to compensation, submit Form LS-207 (Notice of Controversion of Right to Compensation) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(d), 20 CFR 702.251);
  - (6) Immediately upon making the first payment of compensation in any case, submit Form LS-206 (Payment Of Compensation Without Award) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(c), 20 CFR 702.234);
  - (7) When payments are suspended or when making the final payment, submit Form LS-208 (Notice of Final Payment or Suspension of Compensation Payments) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 914(c) and (g), 20 CFR 702.234 and 702.235); and
  - (8) Adhere to all other provisions of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act, and Department of Labor regulations at 20 CFR Parts 701 to 704.
- (b) For additional information on the Longshore and Harbor Workers' Compensation Act requirements see <http://www.dol.gov/owcp/dlhwc/lstdba.htm>.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts to which the Defense Base Act applies.

(End of clause)

#### 52.228-11 INDIVIDUAL SURETY--PLEDGE OF ASSETS (FEB 2021)

(a) The Contractor shall obtain from each person acting as an individual surety on a performance bond or a payment bond--

(1) A pledge of assets that meets the eligibility, valuation, and security requirements described in the Federal Acquisition Regulation (FAR) 28.203-1; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) The Contracting Officer may release a portion of the security interest on the individual surety's assets based upon substantial performance of the Contractor's obligations under its performance bond. The security interest in support of a performance bond shall be maintained--

(1) Contracts for the construction, alteration, or repair of any public building or public work of the Federal Government exceeding \$150,000 (40 U.S.C. 3131). Until completion of any warranty period, or for 1 year following final payment, whichever is later.

(2) Contracts subject to alternative payment protection (see FAR 28.102-1(b)(1)). For the full contract performance period plus 1 year.

(3) Other contracts not subject to the requirements of paragraph (b)(1) of this clause. Until completion of any warranty period, or for 90 days following final payment, whichever is later.

(c) A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release. The security interest on the individual surety's assets in support of a payment bond shall be maintained--

(1) Contracts for the construction, alteration, or repair of any public building or public work of the Federal Government exceeding \$150,000 which require performance and payment bonds (40 U.S.C. 3131). For 1 year following final payment, or until resolution of all pending claims filed against the payment bond during the 1-year period following final payment, whichever is later.

(2) Contracts subject to alternative payment protection (see FAR 28.102-1(b)(1)). For the full contract performance period plus 1 year.

(3) Other contracts not subject to the requirements of paragraph (c)(1) of this clause. For 90 days following final payment.

(d) The Contracting Officer may allow the Contractor to substitute an individual surety, for a performance or payment bond, after contract award. The Contractor shall comply with the requirements of paragraph (a) of this clause within the timeframe established by the Contracting Officer.

(End of clause)

## CLAUSES INCORPORATED BY FULL TEXT

## 52.228-12 PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS. (MAY 2014)

In accordance with section 806(a)(3) of Pub. L. 102-190, as amended by sections 2091 and 8105 of Pub. L. 103-355 (10 U.S.C. 2302 note), upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to 40 U.S.C. chapter 31, subchapter III, Bonds, the Contractor shall promptly provide a copy of such payment bond to the requester.

(End of clause)

## 52.228-14 IRREVOCABLE LETTER OF CREDIT (NOV 2014)

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and--

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to 40 U.S.C. chapter 31, subchapter III, Bonds, the later of--

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of--

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d)(1) Only federally insured financial institutions rated investment grade by a commercial rating service shall issue or confirm the ILC.

(2) Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(3) The Offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institutions have the required credit rating as of the date of issuance of the ILC.

(4) The current rating for a financial institution is available through any of the following rating services registered with the U.S. Securities and Exchange Commission (SEC) as a Nationally Recognized Statistical Rating Organization (NRSRO). NRSRO's can be located at the Web site <http://www.sec.gov/answers/nrsro.htm> maintained by the SEC.

(e) The following format shall be used by the issuing financial institution to create an ILC:

\_\_\_\_\_  
[Issuing Financial Institution's Letterhead or Name and Address]

Issue Date \_ \_ \_ \_

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_

Account party's name \_\_\_\_ \_

Account party's address \_\_\_\_ \_

For Solicitation No. \_\_\_\_ \_ (for reference only)

TO: [ \_\_\_\_ U.S. Government agency]

[ \_\_\_\_ U.S. Government agency's address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$ \_\_\_\_ . This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [ \_\_\_\_ issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on \_\_\_\_ , or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the

account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, International Chamber of Commerce Publication No. \_\_\_\_ -- (Insert version in effect at the time of ILC issuance, e.g., "Publication 600, 2006 edition") and to the extent not inconsistent therewith, to the laws of \_\_\_\_ --[State of confirming financial institution, if any, otherwise State of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

\_\_\_\_

[ \_\_\_\_ Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

\_\_\_\_ [Confirming Financial Institution's Letterhead or Name and Address]

(Date) \_\_\_\_

Our Letter of Credit Advice Number \_\_\_\_

Beneficiary: \_\_\_\_ [U.S. Government agency]

Issuing Financial Institution: \_\_\_\_

Issuing Financial Institution's LC No.: \_\_\_\_

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by \_\_\_\_ [name of issuing financial institution] for drawings of up to United States dollars \_\_\_\_ /U.S. \$ \_\_\_\_ and expiring with our close of business on \_\_\_\_ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at \_\_\_\_ .

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, International Chamber of Commerce Publication No. \_\_\_\_ -- (Insert version in effect at the time of ILC issuance, e.g., ``Publication 600, 2006 edition") and to the extent not inconsistent therewith, to the laws of \_\_\_\_ --[State of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

\_\_\_\_\_

[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

\_\_\_\_\_  
[City, State]

(Date) \_\_\_\_

[Name and address of financial institution]

Pay to the order of \_\_\_\_ [Beneficiary Agency] \_\_\_\_ the sum of United States \_\_\_\_ This draft is drawn under Irrevocable Letter of Credit No. \_\_\_\_

\_\_\_\_ [Beneficiary Agency]

By: \_\_\_\_

(End of clause)

52.229-6 TAXES--FOREIGN FIXED-PRICE CONTRACTS (FEB 2013)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

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

"Contract date," means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

Country concerned means any country, other than the United States and its outlying areas, in which expenditures under this contract are made.

"Tax" and "taxes," include fees and charges for doing business that are levied by the government of the country

concerned or by its political subdivisions.

"All applicable taxes and duties," means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

"After-imposed tax," means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

"After-relieved tax," means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Excepted tax," means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) (1) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States, except as provided in subparagraph (c)(2) of this clause.

(2) Taxes imposed under 26 U.S.C. 5000C may not be—

(i) Included in the contract price; nor

(ii) Reimbursed.

(d) (1) Except as provided in subparagraph (d)(2) of this clause, the contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(2) The contract price may not be increased to offset taxes imposed under 26 U.S.C. 5000C

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.



(h) If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(End of clause)

#### 52.229-11 TAX ON CERTAIN FOREIGN PROCUREMENTS--NOTICE AND REPRESENTATION (JUN 2020)

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

Foreign person means any person other than a United States person.

Specified Federal procurement payment means any payment made pursuant to a contract with a foreign contracting party that is for goods, manufactured or produced, or services provided in a foreign country that is not a party to an international procurement agreement with the United States. For purposes of the prior sentence, a foreign country does not include an outlying area.

United States person as defined in 26 U.S.C. 7701(a)(30) means--

- (1) A citizen or resident of the United States;
- (2) A domestic partnership;
- (3) A domestic corporation;
- (4) Any estate (other than a foreign estate, within the meaning of 26 U.S.C. 701(a)(31)); and
- (5) Any trust if--
  - (i) A court within the United States is able to exercise primary supervision over the administration of the trust; and
  - (ii) One or more United States persons have the authority to control all substantial decisions of the trust.

(b) Unless exempted, there is a 2 percent tax of the amount of a specified Federal procurement payment on any foreign person receiving such payment. See 26 U.S.C. 5000C and its implementing regulations at 26 CFR 1.5000C-1 through 1.5000C-7.

(c) Exemptions from withholding under this provision are described at 26 CFR 1.5000C-1(d)(5) through (7). The Offeror would claim an exemption from the withholding by using the Department of the Treasury Internal Revenue Service Form W-14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments, available via the internet at [www.irs.gov/w14](http://www.irs.gov/w14). Any exemption claimed and self-certified on the IRS Form W-14 is subject to audit by the IRS. Any disputes regarding the imposition and collection of the 26 U.S.C. 5000C tax are adjudicated by the IRS as the 26 U.S.C. 5000C tax is a tax matter, not a contract issue. The IRS Form W-14 is provided to the acquiring agency rather than to the IRS.

(d) For purposes of withholding under 26 U.S.C. 5000C, the Offeror represents that--

(1) It  is  is not a foreign person; and

(2) If the Offeror indicates "is" in paragraph (d)(1) of this provision, then the Offeror represents that--I am claiming on the IRS Form W-14  a full exemption, or  partial or no exemption [Offeror shall select one] from the excise tax.

(e) If the Offeror represents it is a foreign person in paragraph (d)(1) of this provision, then--

(1) The clause at FAR 52.229-12, Tax on Certain Foreign Procurements, will be included in any resulting contract; and

(2) The Offeror shall submit with its offer the IRS Form W-14. If the IRS Form W-14 is not submitted with the offer, exemptions will not be applied to any resulting contract and the Government will withhold a full 2 percent of each payment.

(f) If the Offeror selects "is" in paragraph (d)(1) and "partial or no exemption" in paragraph (d)(2) of this provision, the Offeror will be subject to withholding in accordance with the clause at FAR 52.229-12, Tax on Certain Foreign Procurements, in any resulting contract.

(g) A taxpayer may, for a fee, seek advice from the Internal Revenue Service (IRS) as to the proper tax treatment of a transaction. This is called a private letter ruling. Also, the IRS may publish a revenue ruling, which is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties, and regulations. A revenue ruling is the conclusion of the IRS on how the law is applied to a specific set of facts. For questions relating to the interpretation of the IRS regulations go to <https://www.irs.gov/help/tax-law-questions>.

(End of provision)

#### 52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (MAY 2014)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Title)

\_\_\_\_\_

(Date)

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

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

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

unearned amount until--

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

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

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

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

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

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

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

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

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 6305).

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

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

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

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

(End of clause)

52.232-17 INTEREST (MAY 2014)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if--

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on--

(1) The date on which the designated office receives payment from the Contractor;

(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

## CLAUSES INCORPORATED BY FULL TEXT

## 52.232-23 ASSIGNMENT OF CLAIMS (MAY 2014)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 6305 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

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

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

(End of clause)

## 52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (JAN 2017)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

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

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

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

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

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the

Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

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

(iv) Description of work or services performed.

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

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

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

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

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g.,

52.232-33, Payment by Electronic Funds Transfer--System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer--Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

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

(3) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

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

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

(4) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

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

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(5) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(6) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and



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

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(b) Contract financing payments. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

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

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

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

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

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under 41 U.S.C. 7109 in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to use:

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

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

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

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

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

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

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

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

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

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

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

(i) Make such payment within--

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

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

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under 41 U.S.C. 7109 in effect at the time the Contractor accrues the obligation to pay an interest penalty;

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

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

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

(A) The amounts withheld under paragraph (e)(1) of this clause; and

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

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

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

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

(f) Third-party deficiency reports—

(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a “second-tier subcontractor”) a written notice in accordance with 40 U.S.C. 3133, asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause--

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

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

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

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

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of 41 U.S.C. 7109 in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying--

(1) The amount to be withheld;

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

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

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

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

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

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

(l) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall--

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the--

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of clause)

#### 52.232-35 DESIGNATION OF OFFICE FOR GOVERNMENT RECEIPT OF ELECTRONIC FUNDS TRANSFER INFORMATION (JULY 2013)

(a) As provided in paragraph (b) of the clause at 52.232-34, Payment by Electronic Funds Transfer--Other than System for Award Management, 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:

Name: **Ryan Gregory**

Mailing Address: **Transatlantic Middle East District (TAM)  
U.S. Army Corps of Engineers  
201 Prince Frederick Drive  
Winchester, VA 22602**

Telephone Number: (540) 722-3898

Person to Contact: Ryan K. Gregory

Electronic Address: ryan.k.gregory@usace.army.mil

(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 **least thirty (30) 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.

(End of clause)

### CLAUSES INCORPORATED BY FULL TEXT

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

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

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

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

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

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

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

(End of clause)

### CLAUSES INCORPORATED BY FULL TEXT

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

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

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

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

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

(4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

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

(End of clause)

## CLAUSES INCORPORATED BY FULL TEXT

## 52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)

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

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

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

(End of clause)

## CLAUSES INCORPORATED BY FULL TEXT

### 52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

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

(End of clause)

## CLAUSES INCORPORATED BY FULL TEXT

### 52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)

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

(End of clause)

## CLAUSES INCORPORATED BY FULL TEXT

### 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.

(End of clause)

## CLAUSES INCORPORATED BY FULL TEXT

### 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.

(End of clause)

## CLAUSES INCORPORATED BY FULL TEXT

### 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.

(End of clause)

#### CLAUSES INCORPORATED BY FULL TEXT

##### 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.

(End of clause)

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

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

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

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

(End of clause)

##### 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.

(End of clause)

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

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

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

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

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

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such

variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

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

(End of clause)

#### 52.242-14 SUSPENSION OF WORK (APR 1984)

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

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed—

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of clause)

#### 52.243-4 CHANGES (JUN 2007)

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

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

(2) In the method or manner of performance of the work;

(3) In the Government-furnished property or services; or

(4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating

(1) the date, circumstances, and source of the order and

(2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after

(1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(End of clause)

#### 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (JUL 2021)

(a) Definitions. As used in this clause—

“Commercial item” and “commercially available off-the-shelf item” have the meanings contained in Federal Acquisition Regulation (FAR) 2.101.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

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

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Jun 2020) (41 U.S.C. 3509), if the subcontract exceeds the threshold specified in FAR 3.1004(a) on the date of subcontract award, and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

- (ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.
- (iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).
- (iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (JUN 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.
- (v) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018) (Section 1634 of Pub. L. 115-91).
- (vi) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2020) (Section 889(a)(1)(A) of Pub. L. 115-232)
- (vii) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (viii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- (ix) 52.222-26, Equal Opportunity (Sept 2016) (E.O. 11246).
- (x) 52.222-35, Equal Opportunity for Veterans (Jun 2020) (38 U.S.C. 4212(a)).
- (xi) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) (29 U.S.C. 793).
- (xii) 52.222-37, Employment Reports on Veterans (Jun 2020) (38 U.S.C. 4212).
- (xiii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.
- (xiv)(A) 52.222-50, Combating Trafficking in Persons (OCT 2020) (22 U.S.C. chapter 78 and E.O. 13627).
- (B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
- (xv) 52.222-55, Minimum Wages under Executive Order 13658 (NOV 2020), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.
- (xvi) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause 52.222-62.
- (xvii)(A) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).
- (B) Alternate I (JAN 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable).
- (xviii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xix) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xx) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. 55305 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

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

(End of clause)

#### 52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

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

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

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

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

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

(3) Constitute or imply acceptance; or

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

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

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

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

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

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

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

(End of clause)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

#### 52.248-3 VALUE ENGINEERING--CONSTRUCTION (OCT 2020)

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

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

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

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

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

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

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

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

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

(i) In deliverable end item quantities only; or



(ii) To the contract type only.

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

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

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

(3) A separate, detailed cost estimate for

(i) the affected portions of the existing contract requirement and

(ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.

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

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

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

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

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

(e) Government action.

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

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

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

(f) Sharing.

(1) Rates. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by

(i) 45 percent for fixed-price contracts or

(ii) 75 percent for cost-reimbursement contracts.

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

(i) Accept the VECP;

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

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

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

(h) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$75,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

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

"These data, furnished under the Value Engineering-- Construction clause of contract . . . . . , shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations." If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of clause)

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (APR 2012) - ALTERNATE II (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 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the

Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

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

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

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, for the loss of the Government property..

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the

termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m) 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.

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

(End of clause)

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

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

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

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

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

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

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

(iv) Fires,

(v) Floods,

(vi) Epidemics,

(vii) Quarantine restrictions,

(viii) Strikes,

(ix) Freight embargoes,

(x) Unusually severe weather, or

(xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

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

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

(End of clause)

#### 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):

<https://www.acquisition.gov/>

(End of clause)

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

(End of clause)

252.203-7000 REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (SEP 2011)

(a) Definition. Covered DoD official, as used in this clause, means an individual that--

(1) Leaves or left DoD service on or after January 28, 2008; and

(2)(i) Participated personally and substantially in an acquisition as defined in 41 U.S.C. 131 with a value in excess of \$10 million, and serves or served--

(A) In an Executive Schedule position under subchapter II of chapter 53 of Title 5, United States Code;

(B) In a position in the Senior Executive Service under subchapter VIII of chapter 53 of Title 5, United States Code; or

(C) In a general or flag officer position compensated at a rate of pay for grade O-7 or above under section 201 of Title 37, United States Code; or

(ii) Serves or served in DoD in one of the following positions: Program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount in excess of \$10 million.

(b) The Contractor shall not knowingly provide compensation to a covered DoD official within 2 years after the official leaves DoD service, without first determining that the official has sought and received, or has not received after 30 days of seeking, a written opinion from the appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to the activities that the official is expected to undertake on behalf of the Contractor.

(c) Failure by the Contractor to comply with paragraph (b) of this clause may subject the Contractor to rescission of this contract, suspension, or debarment in accordance with 41 U.S.C. 2105(c).

(End of clause)

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (DEC 2008)

(a) Definitions. As used in this clause—

(1) “Arising out of a contract with the DoD” means any act in connection with—

(i) Attempting to obtain;

(ii) Obtaining, or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) "Conviction of fraud or any other felony" means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) "Date of conviction" means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--

(1) In a management or supervisory capacity on this contract;

(2) On the board of directors of the Contractor;

(3) As a consultant, agent, or representative for the Contractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of the Contractor with regard to this contract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that the Contractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly--

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.



(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone 301-937-1542; [www.ojp.usdoj.gov/BJA/grant/DPFC.html](http://www.ojp.usdoj.gov/BJA/grant/DPFC.html)".

(End of clause)

#### 252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

(a) The Contractor shall inform its employees in writing, in the predominant native language of the workforce, of contractor employee whistleblower rights and protections under 10 U.S.C. 2409, as described in subpart 203.9 of the Defense Federal Acquisition Regulation Supplement.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts.

(End of clause)

#### 252.204-7000 DISCLOSURE OF INFORMATION (OCT 2016)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless--

(1) The Contracting Officer has given prior written approval;

(2) The information is otherwise in the public domain before the date of release; or

(3) The information results from or arises during the performance of a project that involves no covered defense information (as defined in the clause at DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting) and has been scoped and negotiated by the contracting officer to be fundamental research (which by definition cannot involve any covered defense information), in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the Under Secretary of Defense (Acquisition, Technology, and Logistics) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008 (available at DFARS PGI 204.4).

(b) Requests for approval under paragraph (a)(1) shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 10 business days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement, including this paragraph (c), in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

## 252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

(End of clause)

## 252.204-7006 BILLING INSTRUCTIONS (OCT 2005)

When submitting a request for payment, the Contractor shall--

- (a) Identify the contract line item(s) on the payment request that reasonably reflect contract work performance; and
- (b) Separately identify a payment amount for each contract line item included in the payment request.

(End of clause)

## 252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT (MAY 2016)

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

Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

Litigation support means administrative, technical, or professional services provided in support of the Government during or in anticipation of litigation.

Litigation support contractor means a contractor (including its experts, technical consultants, subcontractors, and suppliers) providing litigation support under a contract that contains the clause at 252.204-7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors.

Sensitive information means controlled unclassified information of a commercial, financial, proprietary, or privileged nature. The term includes technical data and computer software, but does not include information that is lawfully, publicly available without restriction.

Technical data means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b) Notice of authorized disclosures. Notwithstanding any other provision of this solicitation or contract, the Government may disclose to a litigation support contractor, for the sole purpose of litigation support activities, any information, including sensitive information, received—

(1) Within or in connection with a quotation or offer; or

(2) In the performance of or in connection with a contract.

(c) Flowdown. Include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items.

(End of clause)

252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (MAY 2019)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of the threshold specified in Federal Acquisition Regulation 9.405-2(b) on the date of subcontract award with a firm, or a subsidiary of a firm, that is identified in the Exclusions section of the System for Award Management System (SAM Exclusions) as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, in SAM Exclusions, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in SAM Exclusions.

(End of clause)

252.222-7002 COMPLIANCE WITH LOCAL LABOR LAWS (OVERSEAS) (JUN 1997)

(a) The Contractor shall comply with all—

(1) Local laws, regulations, and labor union agreements governing work hours; and

(2) Labor regulations including collective bargaining agreements, workers' compensation, working conditions, fringe benefits, and labor standards or labor contract matters.

(b) The Contractor indemnifies and holds harmless the United States Government from all claims arising out of the requirements of this clause. This indemnity includes the Contractor's obligation to handle and settle, without cost to the United States Government, any claims or litigation concerning allegations that the Contractor or the United States Government, or both, have not fully complied with local labor laws or regulations relating to the performance of work required by this contract.

(c) Notwithstanding paragraph (b) of this clause, consistent with paragraphs 31.205-15(a) and 31.205-47(d) of the Federal Acquisition Regulation, the Contractor will be reimbursed for the costs of all fines, penalties, and reasonable litigation expenses incurred as a result of compliance with specific contract terms and conditions or written instructions from the Contracting officer.

(End of clause)

## 252.223-7008 Prohibition of Hexavalent Chromium (JUN 2013)

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

Homogeneous material means a material that cannot be mechanically disjointed into different materials and is of uniform composition throughout.

(1) Examples of homogeneous materials include individual types of plastics, ceramics, glass, metals, alloys, paper, board, resins, and surface coatings.

(2) Homogeneous material does not include conversion coatings that chemically modify the substrate.

Mechanically disjointed means that the materials can, in principle, be separated by mechanical actions such as unscrewing, cutting, crushing, grinding, and abrasive processes.

(b) Prohibition.

(1) Unless otherwise specified by the Contracting Officer, the Contractor shall not provide any deliverable or construction material under this contract that--

(i) Contains hexavalent chromium in a concentration greater than 0.1 percent by weight in any homogenous material; or

(ii) Requires the removal or reapplication of hexavalent chromium materials during subsequent sustainment phases of the deliverable or construction material.

(2) This prohibition does not apply to hexavalent chromium produced as a by-product of manufacturing processes.

(c) If authorization for incorporation of hexavalent chromium in a deliverable or construction material is required, the Contractor shall submit a request to the Contracting Officer.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for commercial items, that are for supplies, maintenance and repair services, or construction materials.

(End of clause)

## 252.225-7005 IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (JUN 2005)

(a) Definition. United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) This clause applies only if the Contractor is--

(1) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is not incorporated in the United States); or

(2) An unincorporated concern having its principal place of business in the United States.

(c) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment that represents estimated expenditures in the United States. The identification--

- (1) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment;
- (2) Should be based on reasonable estimates; and
- (3) Shall state the full amount of the payment requested, subdivided into the following categories:
  - (i) U.S. products--expenditures for material and equipment manufactured or produced in the United States, including end products, components, or construction material, but excluding transportation;
  - (ii) U.S. services--expenditures for services performed in the United States, including all charges for overhead, other indirect costs, and profit under construction or service contracts;
  - (iii) Transportation on U.S. carriers--expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and
  - (iv) Expenditures not identified under paragraphs (c)(3)(i) through (iii) of this clause.
- (d) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor's books or records.

(End of clause)

#### 252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2017)

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

Component means any item supplied to the Government as part of an end product or of another component.

End product means supplies delivered under a line item of this contract.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia  
Austria  
Belgium  
Canada  
Czech Republic  
Denmark  
Egypt  
Estonia  
Finland  
France  
Germany  
Greece  
Israel  
Italy  
Japan  
Latvia

Luxembourg  
Netherlands  
Norway  
Poland  
Portugal  
Slovenia  
Spain  
Sweden  
Switzerland  
Turkey  
United Kingdom of Great Britain and Northern Ireland.

Structural component of a tent--

(i) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs);

(ii) Does not include equipment such as heating, cooling, or lighting.

United States means the 50 States, the District of Columbia, and outlying areas.

U.S.-flag vessel means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Food.

(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.

(3) (i) Tents and structural components of tents;

(ii) Tarpaulins; or

(iii) 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).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply--

- (1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items 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 incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool--
- (i) Is not more than 10 percent of the total price of the end product; and (ii) Does not exceed the simplified acquisition threshold in FAR part 2;
- (3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;
- (4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;
- (5) To chemical warfare protective clothing produced in a qualifying country; or
- (6) 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 product 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 continuous filament para-aramid yarns manufactured in a qualifying country.
- (d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract--
- (i) Shall be taken from the sea by U.S.-flag vessels; or
- (ii) If not taken from the sea, shall be obtained from fishing within the United States; and
- (2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.
- (End of clause)

The Contractor shall ensure that all contract correspondence that is addressed to the United States Government is submitted in English or with an English translation.

(End of clause)

252.225-7043 ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (JUN 2015)

(a) Definition. United States, as used in this clause, means, the 50 States, the District of Columbia, and outlying areas.

(b) Except as provided in paragraph (c) of this clause, the Contractor and its subcontractors, if performing or traveling outside the United States under this contract, shall--

(1) Affiliate with the Overseas Security Advisory Council, if the Contractor or subcontractor is a U.S. entity;

(2) Ensure that Contractor and subcontractor personnel who are U.S. nationals and are in-country on a non-transitory basis, register with the U.S. Embassy, and that Contractor and subcontractor personnel who are third country nationals comply with any security related requirements of the Embassy of their nationality;

(3) Provide, to Contractor and subcontractor personnel, antiterrorism/force protection awareness information commensurate with that which the Department of Defense (DoD) provides to its military and civilian personnel and their families, to the extent such information can be made available prior to travel outside the United States; and

(4) Obtain and comply with the most current antiterrorism/force protection guidance for Contractor and subcontractor personnel.

(c) The requirements of this clause do not apply to any subcontractor that is--

(1) A foreign government;

(2) A representative of a foreign government; or

(3) A foreign corporation wholly owned by a foreign government.

(d) Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from [HQDA-AT, Telephone, DSN 222-9832 or Commercial \(703\) 692-9832](#).

(End of clause)

252.225-7045 BALANCE OF PAYMENTS PROGRAM--CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS--BASIC (AUG 2019)

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

Caribbean Basin country construction material means a construction material that---

(i) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or



(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

Commercially available off-the-shelf (COTS) item--

(i) Means any item of supply (including construction material) that is--

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

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

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

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

Component means any article, material, or supply incorporated directly into construction material.

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

Cost of components means--

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

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

Designated country means--

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu" (Chinese Taipei)), Ukraine, or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country construction material means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material means--

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if--

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

Free Trade Agreement country construction material means a construction material that--

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

Least developed country construction material means a construction material that--

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

United States means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that--

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements apply

to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction materials.

(c) The Contractor shall use only domestic or designated country construction material in performing this contract, except for--

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

Ready-mix concrete, structural steel, cement, steel reinforcement bar, steel wire mesh, sand, gravel, other soil materials, stone, concrete masonry units, fired brick, underground pipes, asphalt, excavation and fill sand and terrazzo tile

(End of clause)

#### 252.225-7048 EXPORT-CONTROLLED ITEMS (JUNE 2013)

(a) Definition. "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes--

(1) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120; and

(2) "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.

(b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

(c) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

(1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, et seq.);

(2) The Arms Export Control Act (22 U.S.C. 2751, et seq.);

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);

(4) The Export Administration Regulations (15 CFR Parts 730-774);

(5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and

(6) Executive Order 13222, as extended.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

(End of clause)

252.225-7993 PROHIBITION ON PROVIDING FUNDS TO THE ENEMY (DEVIATION 2020-0022) (AUG 2020)

(a) The Contractor shall—

(1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this contract are provided directly or indirectly (including through subcontracts) to a person or entity who is actively opposing United States or Coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities;

(2) Check the list of prohibited/restricted sources in the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov) -

(i) Prior to subcontract award; and

(ii) At least on a monthly basis; and

(3) Terminate or void in whole or in part any subcontract with a person or entity listed in SAM as a prohibited or restricted source pursuant to section 841 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291), as amended, unless the Contracting Officer provides to the Contractor written approval of the head of the contracting activity to continue the subcontract.

(b) The Head of the Contracting Activity has the authority to—

(1) Terminate this contract for default, in whole or in part, if the Head of the Contracting Activity determines in writing that the contractor failed to exercise due diligence, as required by paragraph (a) of this clause; or

(2)(i) Void this contract, in whole or in part, if the Head of the Contracting Activity determines in writing that any funds received under this contract have been provided directly or indirectly to a person or entity who is actively opposing United States or Coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(ii) When voided in whole or in part, a contract is unenforceable as contrary to public policy, either in its entirety or with regard to a segregable task or effort under the contract, respectively.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts, including subcontracts for commercial items, under this contract that have an estimated value over \$50,000 and will be performed outside the United States and its outlying areas.

(End of clause)

252.225-7993 PROHIBITION ON PROVIDING FUNDS TO THE ENEMY (DEVIATION 2020-0022) (AUG 2020)

(a) The Contractor shall—

(1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this contract are provided directly or indirectly (including through subcontracts) to a person or entity who is actively opposing United States or Coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities;

(2) Check the list of prohibited/restricted sources in the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov) -

(i) Prior to subcontract award; and

(ii) At least on a monthly basis; and

(3) Terminate or void in whole or in part any subcontract with a person or entity listed in SAM as a prohibited or restricted source pursuant to section 841 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291), as amended, unless the Contracting Officer provides to the Contractor written approval of the head of the contracting activity to continue the subcontract.

(b) The Head of the Contracting Activity has the authority to—

(1) Terminate this contract for default, in whole or in part, if the Head of the Contracting Activity determines in writing that the contractor failed to exercise due diligence, as required by paragraph (a) of this clause; or

(2)(i) Void this contract, in whole or in part, if the Head of the Contracting Activity determines in writing that any funds received under this contract have been provided directly or indirectly to a person or entity who is actively opposing United States or Coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(ii) When voided in whole or in part, a contract is unenforceable as contrary to public policy, either in its entirety or with regard to a segregable task or effort under the contract, respectively.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts, including subcontracts for commercial items, under this contract that have an estimated value over \$50,000 and will be performed outside the United States and its outlying areas.

(End of clause)

#### 252.225-7994 ADDITIONAL ACCESS TO CONTRACTOR AND SUBCONTRACTOR RECORDS IN THE UNITED STATES CENTRAL COMMAND THEATER OF OPERATIONS (DEVIATION 2015-O0013) (MAR 2015)

(a) In addition to any other existing examination-of-records authority, the Department of Defense is authorized to examine any records of the Contractor to the extent necessary to ensure that funds available under this contract are not—

(1) Subject to extortion or corruption; or

(2) Provided, directly or indirectly, to persons or entities that are actively supporting an insurgency or otherwise actively opposing United States or coalition forces in a contingency operation.

(b) The substance of this clause, including this paragraph (b), is required to be included in subcontracts under this contract that have an estimated value over \$100,000.

(End of clause)

252.225-7995 CONTRACTOR PERSONNEL PERFORMING IN THE UNITED STATES CENTRAL COMMAND AREA OF RESPONSIBILITY (DEVIATION 2017-O0004)(SEP 2017)

(a) Definitions. As used in this clause—

“Combatant Commander” means the Commander of the United States Central Command Area of Responsibility.

“Contractors authorized to accompany the Force,” or “CAAF,” means contractor personnel, including all tiers of subcontractor personnel, who are authorized to accompany U.S. Armed Forces in applicable operations and have been afforded CAAF status through a letter of authorization. CAAF generally include all U.S. citizen and third-country national employees not normally residing within the operational area whose area of performance is in the direct vicinity of U.S. Armed Forces and who routinely are collocated with the U.S. Armed Forces (especially in non-permissive environments). Personnel collocated with U.S. Armed Forces shall be afforded CAAF status through a letter of authorization. In some cases, Combatant Commander subordinate commanders may designate mission-essential host nation or local national contractor employees (e.g., interpreters) as CAAF. CAAF includes contractors previously identified as contractors deploying with the U.S. Armed Forces. CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

“Designated reception site” means the designated place for the reception, staging, integration, and onward movement of contractors deploying during a contingency. The designated reception site includes assigned joint reception centers and other Service or private reception sites.

“Law of war” means that part of international law that regulates the conduct of armed hostilities. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

“Non-CAAF” means personnel who are not designated as CAAF, such as local national (LN) employees and non-LN employees who are permanent residents in the operational area or third-country nationals not routinely residing with U.S. Armed Forces (and third-country national expatriates who are permanent residents in the operational area) who perform support functions away from the close proximity of, and do not reside with, U.S. Armed Forces. Government-furnished support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (e.g., bottled water, latrine facilities, security, and food when necessary) when performing their jobs in the direct vicinity of U.S. Armed Forces. Non-CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

“Subordinate joint force commander” means a sub-unified commander or joint task force commander.

(b) General.

- (1) This clause applies to both CAAF and non-CAAF when performing in the United States Central Command (USCENTCOM) Area of Responsibility (AOR).
- (2) Contract performance in USCENTCOM AOR may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.
- (3) When authorized in accordance with paragraph (j) of this clause to carry arms for personal protection, contractor personnel are only authorized to use force for individual self-defense.
- (4) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel authorized to accompany the U.S. Armed Forces can subject such personnel to United States or host nation prosecution and civil liability (see paragraphs (d) and (j)(3) of this clause).

(5) Service performed by contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.  
 (c) Support.

(1)(i) The Combatant Commander will develop a security plan for protection of contractor personnel in locations where there is not sufficient or legitimate civil authority, when the Combatant Commander decides it is in the interests of the Government to provide security because—

- (A) The Contractor cannot obtain effective security services;
- (B) Effective security services are unavailable at a reasonable cost; or
- (C) Threat conditions necessitate security through military means.

(ii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.

(2)(i) Generally, CAAF will be afforded emergency medical and dental care if injured while supporting applicable operations. Additionally, non-CAAF employees who are injured while in the vicinity of U. S. Armed Forces will normally receive emergency medical and dental care. Emergency medical and dental care includes medical care situations in which life, limb, or eyesight is jeopardized. Examples of emergency medical and dental care include examination and initial treatment of victims of sexual assault; refills of prescriptions for life-dependent drugs; repair of broken bones, lacerations, infections; and traumatic injuries to the dentition. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides emergency medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized.

(3) Contractor personnel must have a Synchronized Predeployment and Operational Tracker (SPOT)-generated letter of authorization signed by the Contracting Officer in order to process through a deployment center or to travel to, from, or within the USCENTCOM AOR. The letter of authorization also will identify any additional authorizations, privileges, or Government support that Contractor personnel are entitled to under this contract. Contractor personnel who are issued a letter of authorization shall carry it with them at all times while deployed.

(4) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the USCENTCOM AOR under this contract.

(d) Compliance with laws and regulations.

(1) The Contractor shall comply with, and shall ensure that its personnel performing in the USCENTCOM AOR are familiar with and comply with, all applicable—

- (i) United States, host country, and third country national laws;
- (ii) Provisions of the law of war, as well as any other applicable treaties and international agreements;
- (iii) United States regulations, directives, instructions, policies, and procedures; and
- (iv) Orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(2) The Contractor shall institute and implement an effective program to prevent violations of the law of war by its employees and subcontractors, including law of war training in accordance with paragraph (e)(1)(vii) of this clause.

(3) The Contractor shall ensure that CAAF and non-CAAF are aware—

- (i) Of the DoD definition of “sexual assault” in DoDD 6495.01, Sexual Assault Prevention and Response Program;

(ii) That the offenses addressed by the definition are covered under the Uniform Code of Military Justice (see paragraph (e)(2)(iv) of this clause). Other sexual misconduct may constitute offenses under the Uniform Code of Military Justice, or another Federal law, such as the Military Extraterritorial Jurisdiction Act, or host nation laws; and

(iii) That the offenses not covered by the Uniform Code of Military Justice may nevertheless have consequences to the contractor employees (see paragraph (h)(1) of this clause).

(4) The Contractor shall report to the appropriate investigative authorities, identified in paragraph (d)(6) of this clause, any alleged offenses under—

(i) The Uniform Code of Military Justice (chapter 47 of title 10, United States Code) (applicable to contractors serving with or accompanying an armed force in the field during a declared war or contingency operations); or

(ii) The Military Extraterritorial Jurisdiction Act (chapter 212 of title 18, United States Code).

(5) The Contractor shall provide to all contractor personnel who will perform work on a contract in the deployed area, before beginning such work, information on the following:

(i) How and where to report an alleged crime described in paragraph (d)(4) of this clause.

(ii) Where to seek victim and witness protection and assistance available to contractor personnel in connection with an alleged offense described in paragraph (d)(4) of this clause.

(iii) This section does not create any rights or privileges that are not authorized by law or DoD policy.

(6) The appropriate investigative authorities to which suspected crimes shall be reported include the following—

(i) US Army Criminal Investigation Command at <http://www.cid.army.mil/index.html>;

(ii) Air Force Office of Special Investigations at <http://www.osi.af.mil>;

(iii) Navy Criminal Investigative Service at <http://www.ncis.navy.mil/Pages/publicdefault.aspx>;

(iv) Defense Criminal Investigative Service at <http://www.dodig.mil/HOTLINE/index.html>;

(v) Any command of any supported military element or the command of any base.

(7) Personnel seeking whistleblower protection from reprisals for reporting criminal acts shall seek guidance through the DoD Inspector General hotline at 800-424-9098 or [www.dodig.mil/HOTLINE/index.html](http://www.dodig.mil/HOTLINE/index.html). Personnel seeking other forms of victim or witness protections should contact the nearest military law enforcement office.

(8) The Contractor shall ensure that Contractor employees supporting the U.S. Armed Forces deployed outside the United States are aware of their rights to—

(i) Hold their own identity or immigration documents, such as passport or driver's license;

(ii) Receive agreed upon wages on time;

(iii) Take lunch and work-breaks;

(iv) Elect to terminate employment at any time;

(v) Identify grievances without fear of reprisal;



- (vi) Have a copy of their employment contract in a language they understand;
  - (vii) Receive wages that are not below the legal in-country minimum wage;
  - (viii) Be notified of their rights, wages, and prohibited activities prior to signing their employment contract; and
  - (ix) If housing is provided, live in housing that meets host-country housing and safety standards.
- (e) Preliminary personnel requirements.
- (1) The Contractor shall ensure that the following requirements are met prior to deploying CAAF (specific requirements for each category will be specified in the statement of work or elsewhere in the contract):
    - (i) All required security and background checks are complete and acceptable.
    - (ii) All CAAF deploying in support of an applicable operation—
      - (A) Are medically, dentally, and psychologically fit for deployment and performance of their contracted duties;
      - (B) Meet the minimum medical screening requirements, including theater-specific medical qualifications as established by the geographic Combatant Commander (as posted to the Geographic Combatant Commander’s website or other venue); and
      - (C) Have received all required immunizations as specified in the contract.
        - (1) During predeployment processing, the Government will provide, at no cost to the Contractor, any military-specific immunizations and/or medications not available to the general public.
        - (2) All other immunizations shall be obtained prior to arrival at the deployment center.
        - (3) All CAAF and, as specified in the statement of work, select non-CAAF shall bring to the USCENTCOM AOR a copy of the U.S. Centers for Disease Control and Prevention (CDC) Form 731, International Certificate of Vaccination or Prophylaxis as approved by the World Health Organization, (also known as “shot record” or “Yellow Card”) that shows vaccinations are current.
      - (iii) Deploying personnel have all necessary passports, visas, and other documents required to enter and exit the USCENTCOM AOR and have a Geneva Conventions identification card, or other appropriate DoD identity credential, from the deployment center.
      - (iv) Special area, country, and theater clearance is obtained for all personnel deploying. Clearance requirements are in DoD Directive 4500.54E, DoD Foreign Clearance Program. For this purpose, CAAF are considered non-DoD contractor personnel traveling under DoD sponsorship.
      - (v) All deploying personnel have received personal security training. At a minimum, the training shall—
        - (A) Cover safety and security issues facing employees overseas;
        - (B) Identify safety and security contingency planning activities; and
        - (C) Identify ways to utilize safety and security personnel and other resources appropriately.
      - (vi) All personnel have received isolated personnel training, if specified in the contract, in accordance with DoD Instruction 1300.23, Isolated Personnel Training for DoD Civilian and Contractors.
    - (vii) Personnel have received law of war training as follows:
      - (A) Basic training is required for all CAAF. The basic training will be provided through—
        - (1) A military-run training center; or
        - (2) A web-based source, if specified in the contract or approved by the Contracting Officer.
      - (B) Advanced training, commensurate with their duties and responsibilities, may be required for some Contractor personnel as specified in the contract.
  - (2) The Contractor shall notify all personnel who are not a host country national, or who are not ordinarily resident in the host country, that such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States in accordance with the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3621, et

seq.);

(3) The Contractor shall notify all personnel that -

(i) Pursuant to the War Crimes Act (18 U.S.C. 2441), Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime;

(ii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of U.S. diplomatic, consular, military or other U.S. Government missions outside the United States (18 U.S.C. 7(9)) or non-U.S. nationals who commit crimes against U.S. nationals in those places; and

(iii) In time of declared war or a contingency operation, CAAF are subject to the jurisdiction of the Uniform Code of Military Justice under 10 U.S.C. 802(a)(10).

(iv) Such employees are required to report offenses alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

(v) Such employees will be provided victim and witness protection and assistance.

(f) Processing and departure points. CAAF shall—

(1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of contractor personnel and to ensure that all deployment requirements are met, including the requirements specified in paragraph (e)(1) of this clause;

(2) Use the point of departure and transportation mode directed by the Contracting Officer; and

(3) Process through a designated reception site (DRS) upon arrival at the deployed location. The DRS will validate personnel accountability, ensure that specific USCENTCOM AOR entrance requirements are met, and brief contractor personnel on theater-specific policies and procedures.

(g) *Contractor Accountability and Personnel Data.*

The Synchronized Predeployment and Operational Tracker (SPOT) is the joint web-based database to assist the Combatant Commanders in maintaining awareness of the nature, extent, and potential risks and capabilities associated with contracted support for contingency operations, humanitarian assistance and peacekeeping operations, or military exercises designated by USCENTCOM.

(1) Contractors shall account for all CAAF and non-CAAF personnel in SPOT by name.

(2) Registration. The Contractor shall comply with SPOT registration requirements.

(i) Contractor appointed company administrators for unclassified contracts shall register for a SPOT account at <https://spot.dmdc.mil>. For classified contracts, users shall access SPOT at <https://spot.dmdc.osd.smil.mil>.

(ii) Register in SPOT using one of the following log-in methods –

(A) A Common Access Card (CAC) or a SPOT-approved digital certificate; or

(B) A Government-sponsored SPOT user ID and password. This type of log-in method is only allowed for those individuals who are not authorized to obtain a CAC or an external digital certificate, and requires SPOT Program Management Office approval.

(iii) The SPOT Customer Support Team must validate user need. This process may take 2 business days. Contractor representatives will be contacted to validate contractor administrator account requests and determine the appropriate level of user access.

(iv) Refer to the OSD Program Support website at <http://www.acq.osd.mil/log/PS/spot.html> for the SPOT Business Rules, additional training resources, documentation regarding registration, and use of SPOT.

(3) *Compliance with SPOT.*

(i) The Contractor shall comply with the SPOT Business Rules located at <http://www.acq.osd.mil/log/PS/spot.html>.

(A) The Contractor shall enter into the SPOT web-based system the required information on Contractor personnel prior to deployment to the designated operational area and shall continue to use the SPOT web-based system to maintain accurate, up-to-date information throughout the deployment for applicable Contractor personnel.

(B) The Contractor shall ensure the in-theater arrival date (ITAD), deployment closeout dates and changes to the status of individual Contractor personnel relating to their ITAD and their duty location, to include closing out the deployment with their proper status (e.g., mission complete, killed, wounded) are updated in the system in accordance with the processes and timelines established in the SPOT business rules.

(ii) SPOT non-compliance and deficiencies will be relevant to past performance evaluations for future contract opportunities in accordance with FAR subpart 42.15, Contractor Performance Information.

(h) Contractor personnel.

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall identify all personnel who occupy a position designated as mission essential and ensure the continuity of essential Contractor services during designated operations, unless, after consultation with the Contracting Officer, Contracting Officer's representative, or local commander, the Contracting Officer directs withdrawal due to security conditions.

(3) The Contractor shall ensure that contractor personnel follow the guidance at paragraph (e)(2)(v) of this clause and any specific Combatant Commander guidance on reporting offenses alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

(4) Contractor personnel shall return all U.S. Government-issued identification, to include the Common Access Card, to appropriate U.S. Government authorities at the end of their deployment (or, for non-CAAF, at the end of their employment under this contract).

(i) Military clothing and protective equipment.

(1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander. If authorized to wear military clothing, contractor personnel must—

(i) Wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures; and

(ii) Carry the written authorization with them at all times.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(3) The deployment center, or the Combatant Commander, shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of contractor personnel.

(4) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(j) Weapons.

(1) If the Contractor requests that its personnel performing in the USCENTCOM AOR be authorized to carry weapons for individual self-defense, the request shall be made through the Contracting Officer to the Combatant Commander, in accordance with DoD Instruction 3020.41. The Combatant Commander will determine whether to authorize in-theater contractor personnel to carry weapons and what weapons and ammunition will be allowed.

(2) If contractor personnel are authorized to carry weapons in accordance with paragraph (j)(1) of this clause, the Contracting Officer will notify the Contractor what weapons and ammunition are authorized.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained to carry and use them—

- (A) Safely;
  - (B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander; and
  - (C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;
  - (ii) Are not barred from possession of a firearm by 18 U.S.C. 922;
  - (iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition;
  - (iv) Comply with applicable Combatant Commander and local commander force-protection policies; and
  - (v) Understand that the inappropriate use of force could subject them to U.S. or host-nation prosecution and civil liability.
- (4) Whether or not weapons are Government-furnished, all liability for the use of any weapon by contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.
- (5) Upon redeployment or revocation by the Combatant Commander of the Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.
- (k) Vehicle or equipment licenses. Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the USCENTCOM AOR.
- (l) Purchase of scarce goods and services. If the Combatant Commander has established an organization for the USCENTCOM AOR whose function is to determine that certain items are scarce goods or services, the Contractor shall coordinate with that organization local purchases of goods and services designated as scarce, in accordance with instructions provided by the Contracting Officer.
- (m) Evacuation.
- (1) If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to United States and third country national contractor personnel.
  - (2) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location sufficient to meet obligations under this contract.
- (n) Next of kin notification and personnel recovery.
- (1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is isolated, missing, detained, captured, or abducted.
  - (2) The Government will assist in personnel recovery actions in accordance with DoD Directive 3002.01E, Personnel Recovery in the Department of Defense.
- (o) Mortuary affairs. Contractor personnel who die while in support of the U.S. Armed Forces shall be covered by the DoD mortuary affairs program as described in DoD Directive 1300.22, Mortuary Affairs Policy, and DoD Instruction 3020.41, Operational Contractor Support.
- (p) Changes. In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in the place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph (p) shall be subject to the provisions of the Changes clause of this contract.
- (q) Subcontracts. The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts when subcontractor personnel are performing in the USCENTCOM AOR.
- (End of clause)

## 252.227-7022 GOVERNMENT RIGHTS (UNLIMITED) (MAR 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(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.

## 252.228-7003 CAPTURE AND DETENTION (DEC 1991)

(a) As used in this clause --

(1) Captured person means any employee of the Contractor who is --

(i) Assigned to duty outside the United States for the performance of this contract; and

(ii) Found to be missing from his or her place of employment under circumstances that make it appear probable that the absence is due to the action of the force of any power not allied with the United States in a common military effort; or

(iii) Known to have been taken prisoner, hostage, or otherwise detained by the force of such power, whether or not actually engaged in employment at the time of capture; provided, that at the time of capture or detention, the person was either --

(A) Engaged in activity directly arising out of and in the course of employment under this contract; or

(B) Captured in an area where required to be only in order to perform this contract.

(2) A period of detention begins with the day of capture and continues until the captured person is returned to the place of employment, the United States, or is able to be returned to the jurisdiction of the United States, or until the person's death is established or legally presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever occurs first.

(3) United States comprises geographically the 50 states and the District of Columbia.

(4) War Hazards Compensation Act refers to the statute compiled in chapter 12 of title 42, U.S. Code (sections 1701-1717), as amended.

(b) If pursuant to an agreement entered into prior to capture, the Contractor is obligated to pay and has paid detention benefits to a captured person, or the person's dependents, the Government will reimburse the Contractor up to an amount equal to the lesser of --

(1) Total wage or salary being paid at the time of capture due from the Contractor to the captured person for the period of detention; or

(2) That amount which would have been payable if the detention had occurred under circumstances covered by the War Hazards Compensation Act.

(c) The period of detention shall not be considered as time spent in contract performance, and the Government shall not be obligated to make payment for that time except as provided in this clause.

(d) The obligation of the Government shall apply to the entire period of detention, except that it is subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive prior expiration, completion, or termination of this contract.

(e) The Contractor shall not be reimbursed under this clause for payments made if the employees were entitled to compensation for capture and detention under the War Hazards Compensation Act, as amended.

#### 252.229-7001 TAX RELIEF (APR 2020)

(a) Prices set forth in this contract are exclusive of all taxes and duties from which the United States Government is exempt by virtue of tax agreements between the United States Government and the Contractor's government. The following taxes or duties have been excluded from the contract price:

NAME OF TAX: (Offeror Insert) RATE (PERCENTAGE): (Offeror Insert)

(b) Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available. The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

(c) When items manufactured to United States Government specifications are being acquired, the Contractor shall identify the materials or components intended to be imported in order to ensure that relief from import duties is obtained. If the Contractor intends to use imported products from inventories on hand, the price of which includes a factor for import duties, the Contractor shall ensure the United States Government's exemption from these taxes. The Contractor may obtain a refund of the import duties from its government or request the duty-free import of an amount of supplies or components corresponding to that used from inventory for this contract.

(End of clause)

#### 252.232-7008 ASSIGNMENT OF CLAIMS (OVERSEAS) (JUNE 1997)

(a) No claims for monies due, or to become due, shall be assigned by the Contractor unless—

(1) Approved in writing by the Contracting Officer;

(2) Made in accordance with the laws and regulations of the United States of America; and

(3) Permitted by the laws and regulations of the Contractor's country.

(b) In no event shall copies of this contract of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential" be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive such documents. However, a copy of any part or all of this contract so marked may be furnished, or any information contained herein may be disclosed, to such assignee upon the Contracting Officer's prior written authorization.

(c) Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies, and for which direct payment thereof is to be made to an assignee, the Contractor shall—

(1) Identify the assignee by name and complete address; and

(2) Acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

(End of clause)

#### 252.232-7010 LEVIES ON CONTRACT PAYMENTS (DEC 2006)

(a) 26 U.S.C. 6331(h) authorizes the Internal Revenue Service (IRS) to continuously levy up to 100 percent of contract payments, up to the amount of tax debt.

(b) When a levy is imposed on a payment under this contract and the Contractor believes that the levy may result in an inability to perform the contract, the Contractor shall promptly notify the Procuring Contracting Officer in writing, with a copy to the Administrative Contracting Officer, and shall provide--

(1) The total dollar amount of the levy;

(2) A statement that the Contractor believes that the levy may result in an inability to perform the contract, including rationale and adequate supporting documentation; and

(3) Advice as to whether the inability to perform may adversely affect national security, including rationale and adequate supporting documentation.

(c) DoD shall promptly review the Contractor's assessment, and the Procuring Contracting Officer shall provide a written notification to the Contractor including--

(1) A statement as to whether DoD agrees that the levy may result in an inability to perform the contract; and

(2)(i) If the levy may result in an inability to perform the contract and the lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or

(ii) If the levy may result in an inability to perform the contract but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.

(d) Any DoD determination under this clause is not subject to appeal under the Contract Disputes Act.

(End of clause)

## 252.233-7001 CHOICE OF LAW (OVERSEAS) (JUNE 1997)

This contract shall be construed and interpreted in accordance with the substantive laws of the United States of America. By the execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts where this contract is performed and agrees to accept the exclusive jurisdiction of the United States Armed Services Board of Contract Appeals and the United States Court of Federal Claims for hearing and determination of any and all disputes that may arise under the Disputes clause of this contract.

(End of clause)

## 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.

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

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

(b) The Contractor shall--

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.



(c) In general--

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

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

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

Title	File	Drawing No.
-------	------	-------------

(End of clause)

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

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

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

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

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

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

(i) Actual mobilization costs at completion of mobilization;

(ii) Actual demobilization costs at completion of demobilization; and

(iii) The remainder of this item in the final payment under this contract.

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

#### 252.236-7013 REQUIREMENT FOR COMPETITION OPPORTUNITY FOR AMERICAN STEEL PRODUCERS, FABRICATORS, AND MANUFACTURERS (JUN 2013)

(a) Definition. Construction material, as used in this clause, means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work.

(b) The Contractor shall provide American steel producers, fabricators, and manufacturers the opportunity to compete when acquiring steel as a construction material (e.g., steel beams, rods, cables, plates).

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in any subcontract that involves the acquisition of steel as a construction material, including subcontracts for the acquisition of commercial items.

(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.

(End of clause)

252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (DEC 2012)

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

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

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

-----  
(Official's Name)

-----  
(Title)

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

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

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

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

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

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

## 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (FEB 2019)

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

"Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

"Department of Defense" (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

"Foreign-flag vessel" means any vessel that is not a U.S.-flag vessel.

"Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

"Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

"Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

"U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if--

(i) This contract is a construction contract; or

(ii) The supplies being transported are--

(A) Noncommercial items; or

(B) Commercial items that--

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it contracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that --

- (1) U.S.-flag vessels are not available for timely shipment;
- (2) The freight charges are inordinately excessive or unreasonable; or
- (3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum --

- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number; and
- (7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of the steamship company.

(f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief--

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all foreign-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTAL	_____	_____

(g) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) If the Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies; however, after the award of this contract, the Contractor learns that supplies will be transported by sea, the Contractor--

- (1) Shall notify the Contracting Officer of that fact; and
- (2) Hereby agrees to comply with all the terms and conditions of this clause.

(i) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

- (1) The Contractor shall insert the substance of this clause, including this paragraph (i), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.
- (2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (i), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

## Section 00 73 00 - Supplementary Conditions

SPECIAL CONTRACT REQUIREMENTS

<b>PARAGRAPH</b>	<b>SPECIAL CONTRACT REQUIREMENTS</b>
1	CONTRACT ADMINISTRATION
2	SUBMITTING PAY ESTIMATES AND PAYMENTS TO THE CONTRACTOR
3	CONTRACTOR LIAISON WITH FOREIGN GOVERNMENT
4	INSTALLATION ACCESS
5	INDIVIDUALS/WORKERS FROM COUNTRIES OF CONCERN
6	OPERATIONS AND STORAGE AREAS
7	LANGUAGE
8	U.S. ARMY CORPS OF ENGINEERS SAFETY AND HEALTH REQUIREMENT
9	OTHER WORK
10	REQUIRED INSURANCE
11	WORKERS COMPENSATION INSURANCE (DEFENSE BASE ACT) – CONSTRUCTION
12	PUBLIC RELEASE OF INFORMATION
13	CONTRACTOR PERFORMANCE EVALUATIONS
14	IMPLEMENTING EQUIPMENT GUARANTEES
15	SAFEGUARDING OF INFORMATION
16	DUTIES, TAXES, LICENSE FEES – Kingdom of Jordan
17	ENGLISH SPEAKING REPRESENTATIVE
18	SMALL BUSINESS INFORMATION
19	AOR SPECIFIC AT AWARENESS TRAINING
20	REQUIREMENTS FOR ISSUANCE OF NOTICE TO PROCEED
	<b>Appendix A</b>
<b>ATTACHMENTS</b>	<b>SOLICITATION ATTACHMENTS</b>
	Attachment 1: Corporate Certificate/Authority To Bind Partnership
	Attachment 2: Past Performance Overview Sheet
	Attachment 3: Project Summary Form
	Attachment 4: Past Performance Questionnaire (Ppq-0)
	Attachment 5: Proposal Schedule And Cost Breakdown Sheet
	Attachment 6: Performance Surety Form
	Attachment 7: Payment Surety Form
	Attachment 8: Non-Collusive Certificate
	Attachment 9: Performance Distribution Statement
	Attachment 10: Contractor Responsibility

**1. CONTRACT ADMINISTRATION**

The Contracting Officer, Ryan K. Gregory, will administer this contract at the following address:

U.S. Army Corps of Engineers Transatlantic Middle East District (TAM)  
Attn: Ryan K. Gregory

201 Prince Frederick Drive Winchester, VA 22602  
Phone Number: 540-722-3898  
E-mail: [Ryan K. Gregory@usace.army.mil](mailto:Ryan.K.Gregory@usace.army.mil)

Contracting Officer's Representative: A Contracting Officer's Representative (COR) will be appointed in writing by the Contracting Officer under this contract. The COR will conduct oversight of the contract work and report to the Contracting Officer. The COR will not have authority to change the terms of the contract or obligate funds of the government.

(End of Requirement)

## 2. SUBMITTING PAY ESTIMATES AND PAYMENTS TO THE CONTRACTOR

The contractor shall use Engineer Form 93 (ENG 93), Payment Estimate – Contract Performance, as its request for payment. The Contractor must submit the certification at FAR Clause 52.232-5, paragraph (c) along with each request for progress payment. The ENG Form 93 shall be sent to the Contracting Officer's Representative for certification that the work invoiced has been performed. All payments made by the U.S. Government to the contractor for work performed under this contract will be made in U.S. Dollars.

Progress payments are authorized under a construction contract in accordance with Contract Clause 52.232-5, "Payments Under Fixed-Price Construction Contracts," which states that the Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer. The Contracting Officer will review and approve requests for progress payments in accordance with the "Payments under Fixed-Price Construction Contracts" clause of the contract, Section 00 72 00. When the work is certified complete and a proper invoice has been received, the Contracting Officer can process the invoice for payment through the cognizant finance and accounting office.

Method of Payment - Electronic Funds Transfer

(End of Requirement)

## 3. CONTRACTOR LIAISON WITH FOREIGN GOVERNMENT

All communication by the contractor with officials, representatives and/or offices of the Host Government in all matters pertaining to the work to be accomplished under this contract shall be through and in full liaison with the Contracting Officer, except as is otherwise the common practice in the processing of normal business licenses and permissions with the various levels of the Host Government.

(End of Requirement)

## 4. INSTALLATION ACCESS

Work under this contract will be performed at a location with security and access control procedures. Compliance with base pass and access procedures is the sole responsibility of the Contractor, and is required to be accomplished prior to initiation of the process for gaining access to controlled sites. Contractor shall be responsible for determining the nature and amount of any fees required. Contractor is responsible for all workers granted access pursuant to work under this contract.

a. Other Data: Contractor shall provide additional data, as required and not specifically indicated above, to secure all required passes for where work is required to be performed.

b. Compliance with Revised Requirements: The government may revise requirements and procedures for obtaining passes and/or access to the site of work at any time during the life of the contract. Contractor shall comply with all such requirements, as directed by the Contracting Officer.

c. Contractor shall employ an acceptable system for accountability and control of all compound passes/access badges issued to him. Passes/Access Badges shall be returned to the Government as soon as they are no longer required. This system shall be approved by the Contracting Officer, and shall be modified as directed by the Contracting Officer to correct any deficiencies noted during contract performance in maintaining an acceptable level of accountability and control.

(End of Requirement)

## 5. INDIVIDUALS/WORKERS FROM COUNTRIES OF CONCERN

The information contained in this Paragraph is for informational purposes only. It is the Contractor's responsibility to verify that the information provided is accurate and current. Compliance with base pass and access procedures, as well as understanding of the time frames for obtaining base passes and access, is the sole responsibility of the Contractor, and the procedures are subject to change. Contractor shall be responsible for determining the nature and amount of any fees required. The installation controls access to the project site and may impose controls and restrictions based on nationality and other factors, in the issuance of work visas and in granting or denying installation access to individuals, materials, and equipment. It shall be the responsibility of the Contractor to determine what such restrictions may apply to its workforce and to maintain an adequate workforce in Jordan and secure installation access for sufficient personnel, materials, and equipment to perform the requirements of the contract, even as controls or restrictions on work visas and/or installation access change before or during the performance of the contract.

Citizens of the countries listed may be subject to additional levels of Host-Nation security screening. Additional screening may require significant additional time and/or prohibited access to the work site. Compliance with base pass and access procedures is the sole responsibility of the Contractor and this information is provided for informational purposes only.

Afghanistan  
Cambodia  
Commonwealth of Independent States (including Armenia, Azerbaijan, Byelorussia, Kazakhstan, Kirghizia, Moldavia, Russia, Tadzhikistan, Turkestan, and Uzbekistan; the Kurile Islands; and South Sakhalin (Karafuto)).  
Cuba  
Egypt  
Iran  
Iraq  
Libya  
North Korea (Communist Korea)  
Pakistan  
People's Republic of China, including Tibet  
Syria  
Vietnam  
Lebanon  
Sudan  
Yemen  
Turkey  
Palestine

(End of Requirement)

## 6. OPERATIONS AND STORAGE AREAS

There may be limited areas available for use by the Contractor on the work sites covered by the contract; it is the Contractor's responsibility to obtain the appropriate approvals from the Government of Jordan. Areas to be provided for Contractor's use in operation of his offices, shops, and storage facilities will be designated by the Contracting Officer's on-site representative. The Contractor shall not be authorized to have living accommodations for his work



force on any worksite. Contractor shall be responsible for providing all off-site facilities necessary to effectively and efficiently manage, administer, and prosecute the contract work. Contractor shall be responsible for obtaining and payment of all fees and other costs related to obtaining required Host Nation or local authorizations, permits and licenses necessary to establish quarry operations, batching operations and haul routes and disposal sites.

All Contractor facilities shall be of substantial construction suitable for local weather conditions. Sanitary facilities shall meet the requirements of Corps of Engineers Safety and Health Requirements Manual EM 385-1-1. Except as specifically approved by the Contracting Officer, Contractor shall construct a temporary 1.8 meter high chain link fence around all trailers and materials storage areas. Fences shall include plastic strip inserts, colored brown, so that visibility through the fence is obstructed.

Administrative Facilities: The Contractor may be provided the use of a parcel of land. The Contractor shall be required to provide, at his own expense, any improvements to this site such as surfacing, fencing, trailers, and/or sheds that are necessary for performance of work under this contract. The site shall be maintained to present a neat and orderly appearance.

Communications: Contractor may be allowed to use commercial telephone service if available. If available, it is the Contractor's responsibility to arrange for service installation and any recurring charges.

(End of Requirement)

## 7. LANGUAGE

Translation, drawings, specifications, instructions, or other documents furnished to the Contractor by the Government in connection with the performance of the work will be in the English language only. The Contractor shall provide any translations that are necessary *or* proper for the performance of the work. Errors or omissions in such translations from the Government furnished drawings, specifications, instructions or other documents shall be the responsibility of the Contractor. The English text shall govern in the event of disagreements occasioned by differences between the text and the Contractor's translation of drawings, specifications, instructions or other documents furnished by the Government pursuant to the provisions of the contract. All correspondence, drawings, and other documents submitted by the Contractor shall be entirely in English, except as otherwise provided in the contract. All references in correspondence or other documents to monetary sums shall be furnished in United States Dollars.

Discrepancy. In the event of a disagreement between the English text and any foreign language translation of this contract, the English will govern.

(End of Requirement)

## 8. USACE SAFETY AND HEALTH REQUIREMENTS MANUAL, EM 385- 1-1

The Contractor is responsible for complying with US Army Corps of Engineers safety and health requirements as set forth in manual EM 385-1-1. The manual is posted online at <http://www.usace.army.mil>, select "Library" from the top banner; select "Publications", under "USACE Publications" select "Engineer Manuals"; under the "Pub Number" column, find and select EM 385-1-1. The manual is available in English, Arabic, Japanese and Dari.

(End of Requirement)

## 9. OTHER WORK

The Contractor shall fully cooperate with other Contractors, utility companies, and government employees engaged in other work on and/or adjacent to the work to be performed under this contract. The Contractor shall coordinate the work herein and the use of haul roads, aggregate sources, and utilities that become a joint responsibility. Any

damage resulting from the use of facilities of other Contractors shall immediately be repaired to the satisfaction of, or as directed by the Contracting Officer.

(End of Requirement)

## 10. REQUIRED INSURANCE

The Contractor shall procure and maintain during the entire period of his performance under this contract the insurance required by the General Provisions of this contract entitled Workmen's Compensation Insurance (Defense Base Act), and Workmen's Compensation and War Hazard Insurance Overseas. A blanket waiver of the provision of the Defense Base Act is in effect for all employees of Contractors and Subcontractors working on Department of the Army contracts who are neither residents nor citizens of the United States, nor who were hired in the United States at locations with an active DBA waiver. Countries with an active DBA waiver may be found at <https://www.dol.gov/owcp/dlhwc/dbawaivers/dbawaivers.htm>.

- a. The waiver does not apply to any employees who are (1) Hired in the United States by any Contractor or Subcontractor; (2) Residents of the United States; or (3) Citizens of the United States.
- b. Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a certificate or written statement of required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the Government in such insurance shall not be effective for such period as may be prescribed by the laws of the state in which this contract is to be performed in no event less than thirty (30) calendar days after written notice thereof to the Contracting Officer.

(End of Requirement)

## 11. WORKERS COMPENSATION INSURANCE (DEFENSE BASE ACT) (APRIL 2011)

This Special Contract Requirement supplements FAR Clause 52.228-3, Workers' Compensation Insurance (Defense Base Act).

The Contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract. The Contractor shall obtain commercially available DBA insurance from a Department of Labor (DOL) authorized insurance carrier unless the contractor is under a self insurance program approved by the DOL, or subject to waiver. The DOL approved carriers and self insured employers are listed at <https://www.dol.gov/owcp/dlhwc/lscarrier.htm>. The Contractor shall submit proof of a valid DBA Insurance policy before issuance of the Notice to Proceed (NTP).

The Contractor agrees to insert a Special Contract Requirement substantially the same as this one in all subcontracts (at every tier) to which DBA is applicable.

Claims reporting – The Contractor shall make timely Defense Base Act insurance claims on behalf of each employee who is injured or killed in the course of their employment under this contract, and shall ensure that similar language is in each Subcontractor's contract. The Contractor's Safety officer shall, in addition to any other duties required to be performed under the contract, perform the following:

- (i) Make timely Defense base Act insurance claims on behalf of each employee who is injured or killed in the course of their employment under this contract; and
- (ii) Make monthly written reports to the Contracting Officer, Administrative Contracting Officer, and the District/Center Safety and Occupational Health manager, providing the names of each such injured or deceased employee, the circumstances surrounding each injury or death, the dates of each injury or death, the date the insurance claim was made on behalf of each employee, and the current status of each claim.
- (iii) The District/Center Safety and Occupational Health Manager POC is:

- Ms. Melanie C. Barajas, phone (540) 665-3746; email [Melanie.C.Hart-Barajas@usace.army.mil](mailto:Melanie.C.Hart-Barajas@usace.army.mil)

Failure to comply and purchase Defense Base Act (DBA) Insurance in accordance with FAR Clause 52.228-3, Workers' Compensation Insurance (Defense Base Act)," shall be considered a material breach and could cause the contract to be terminated for default/cause.

(End of Requirement)

## 12. PUBLIC RELEASE OF INFORMATION

The Contractor shall coordinate with the Middle East District of the U.S. Army Corps of Engineers for release of information to the public concerning this contract or any program related to this contract. This clause covers Media Relations and Printed Materials.

Media Relations: The Contractor is permitted to speak to news media representatives in accordance with his firm's public relations policies and in conjunction with applicable U.S. government or Army Corps of Engineers' guidelines on release of information related to the specific program for which the contract was awarded. The Contractor is required to inform the Middle East District of significant media contacts. The Contractor is encouraged to coordinate directly with the Middle East District's Public Affairs Officer, as necessary, when the media call is being responded to; however, this shall not preclude the Contractor from responding to media requests in a timely manner. The Contractor shall respond to inquiries that directly fall within his domain; he shall not speak for the Army or the Corps.

Printed Materials:

- (1) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium, pertaining to this contract, unless:
  - (a) The Middle East District has given written approval, either by the Public Affairs Officer or by the Contracting Officer;
  - (b) Or the information is otherwise in the public domain before the date of release.
- (2) The Contractor shall obtain approval from the Middle East District prior to the dissemination of any briefings or speeches, news releases, articles, fact sheets, advertisements, or any other informational materials intended for public release that are the result of work performed or to be performed under this contract. This review is intended to insure that public release of material does not violate government policy.
- (3) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for release. This material shall be submitted to the Public Affairs Officer and to the Contracting Officer at the Middle East District. The Contractor shall strive to provide five (5) work days for such approvals. Materials to be released within a shorter period of time will require special handling procedures, and the Contractor shall request special consideration directly to the Public Affairs Officer or to the Contracting Officer.
- (4) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime Contractor to the government (the Public Affairs Officer and the Contracting Officer), assuring the government that the prime Contractor is knowledgeable of the action and concurs.

*Nothing in the foregoing section on public release of information shall affect compliance with the clause of the contract entitled, "Security Requirements."*

(End of Requirement)

### **13. CONTRACTOR PERFORMANCE EVALUATIONS**

In accordance with the provisions of Subpart 36.201 (Evaluation of Contractor Performance) of the Federal Acquisition Regulation (FAR), construction Contractor's performance shall be evaluated throughout the performance of the contract. In accordance with FAR 42.1502(e), construction contracts awarded at or above \$700,000.00 will be evaluated using the Contractor Performance Assessment Reports (CPARS) system. CPARS hosts a suite of web-enabled applications that are used to document contractor performance. After an evaluation (interim or final) is written up by the USACE, the Contractor will have the ability to access, review and comment on the evaluation for a period of sixty (60) calendar days. Accessing and using CPARS requires specific software, called PKI certification, which is installed on the user's computer. The certification is a Department of Defense requirement and was implemented to provide security in electronic transactions. The certification software could cost approximately \$110 - \$125 per certificate per year and is purchased from an External Certificate Authorities (ECA) vendor. Current information about the PKI certification process and for contacting vendors can be found on the web site: <https://www.cpars.gov>. CPARS and PKI certification is the sole responsibility of the Contractor.

(End of Requirement)

### **14. IMPLEMENTING EQUIPMENT GUARANTEES**

When the completed facility or part of a facility is accepted by the Contracting Officer, and the work includes equipment covered by a guarantee which exceeds the warranty of construction period as specified, the Contractor shall furnish the following information to the Contracting Officer:

- a. A list of all items with makes and model numbers.
- b. A copy of manufacturer's or vendor's guarantee documents which extend beyond the warranty of construction period.
- c. The date during which the Contractor's guarantee is in effect under the properly identified individual section and paragraph of the Technical Provisions each item of equipment on the list, indicating for each item the date of acceptance for the beginning of the guarantee period, either for beneficial use or final acceptance, whichever is earlier, and the expiration date of the guarantee period.
- d. Name of an authorized representative of the prime Contractor with complete address and telephone number, and the names, addresses, and telephone numbers of all subcontractors and/or equipment suppliers or manufacturers specifically designated in writing by the prime Contractor for direct contact by the Host Government for implementing the guarantee after transfer of the equipment.

(End of Requirement)

### **15. SAFEGUARDING OF INFORMATION**

The personnel employed under this contract may, in the performance of their assigned duties, have access to data and information pertaining to location of goods, supplies, parts, equipment, vehicles, and explosives. Knowledge of this nature is considered restricted security information. This information shall be protected and safeguarded against disclosure to any unauthorized person or party and shall be furnished or used on an official "need to know" basis only. Safeguarding of information is extended to dependents and guests of employees, who may, in any manner, obtain knowledge of the Host Government military capacity. Taking photographs of any airport, military installation, or military facility is prohibited.

(End of Requirement)

**16. DUTIES, TAXES, AND LICENSE FEES – KINGDOM OF JORDAN**

All materials, equipment and supplies that are for use and/or incorporation into the project are exempt from Host Government taxes, duties and license fees. The Contractor warrants his price for this contract is exclusive of any such charges.

If after the date of this contract and except for the provisions of paragraph c., below, the Contractor is required by the Host Government to pay any such taxes, duties, or license fees (paid directly to the Host country), on materials, equipment and supplies for use and/or Incorporation into this project, he shall notify the Contracting Officer in writing. Upon satisfactory proof of payment of such duties, taxes or license fees, the Contractor will be reimbursed for the amount of the payment therefore.

Contractor-owned or controlled materials, equipment and supplies sold or disposed of by the Contractor may be subject to the imposition of local duties and within the Host country taxes. No reimbursement will be made under this clause for such transactions.

The contractor shall maintain an inventory control and accounting system adequate to reflect the usage and disposition of all contractor-owned property which has entered the country duty-free under this contract.

(End of Requirement)

**17. ENGLISH SPEAKING REPRESENTATIVE**

At all times when any performance of the work at any site is being conducted by any employee of the Contractor or his subcontractors, the Contractor shall have a representative present at each site who has the capability of receiving instructions in the English language, fluently speaking the English language and explaining the work operations to persons performing the work in the language that those performing the work are capable of understanding. The Contracting officer shall have the right to determine whether the proposed representative has sufficient technical and lingual capabilities, and the Contractor shall immediately replace any individual not acceptable to the Contracting Officer.

(End of Requirement)

**18. SMALL BUSINESS INFORMATION**

In accordance with FAR 19.702 (b) (3), this solicitation does not require a subcontracting plan as the place of performance for this requirement will be entirely OCONUS; however, in accordance with the statutory requirements of 19.702, any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. 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, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(End of Requirement)

**19. AOR SPECIFIC AT AWARENESS TRAINING**

All US based contractor employees and associated sub-contractor employees traveling overseas will receive the government provided AOR specific AT awareness training. The documentation of training completion must be provided to the COR prior to departure.”

(End of Requirement)

## **20. REQUIREMENTS FOR ISSUANCE OF NOTICE TO PROCEED**

The following contract requirements (1) through (4) below must be provided to the Contracting Officer and the Contract Specialist. No earlier deadline for meeting any requirement included herein is waived by this clause. The purpose of this clause is specifically to set forth prerequisites for issuance of Notice to Proceed.

**FAILURE TO PROVIDE THE FOLLOWING ITEMS TO THE CONTRACTING OFFICER WITHIN FIFTEEN (15) CALENDAR DAYS FROM CONTRACT AWARD MAY BE CONSIDERED A MATERIAL BREACH OF CONTRACT AND COULD CAUSE THIS CONTRACT TO BE TERMINATED FOR DEFAULT. ANY TIME THAT THE NOTICE TO PROCEED IS DELAYED DUE TO THE CONTRACTOR'S FAILURE TO MEET ANY OF THE REQUIREMENTS SHALL BE DEDUCTED FROM THE CONTRACT PERIOD OF PERFORMANCE.**

1. Signed acknowledgement of the Notice of Award. You must provide a complete and signed copy of the Notice of Award to the Contracting Officer.
2. Proof of a valid DBA Insurance policy with Department of Labor's (DOL) DBA insurance carriers for the Prime and all Subcontractors at every tier for performance of this contract. This is a contract requirement in accordance with FAR clause 52.228-3 "Worker's Compensation Insurance (Defense Base Act)". Proof of this insurance policy may be in the form of a paid invoice for DBA Insurance or an email from DOL's insurance carrier sent to the Contracting Officer.
3. Provide Performance and Payment Bonds as required by the contract and in accordance with FAR Part 28.
4. EFT Wire Transfer Form. If this is your first contract with the United States Corps of Engineers (USACE) Transatlantic Middle East District (TAM), you must complete the EFT Wire Transfer Form and return to the Contracting Officer. The EFT Wire Transfer Form will be provided upon request. All contracts with USACE TAM are paid by electronic funds transfer.

(End of Requirement)

## **Appendix A**

### **ATTACHMENT 1**

If a corporation submits the proposal, The Corporate Certificate at paragraph A below must be submitted. If the proposal is submitted by a partnership, the Authority to Bind Partnership at paragraph B below must be completed

and a copy of the partnership agreement included with the proposal. Offerors may reproduce and submit these certificates on a separate sheet of paper.

**A. CORPORATE CERTIFICATE**

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ (Title) of the Corporation named as offer/contractor herein, that \_\_\_\_\_, who signed this proposal/contract on behalf of the offeror/Contractor was then \_\_\_\_\_ of said corporation; that said proposal/contract was duly signed for and on behalf of said corporation by authority of its governing body and within the scope of its governing body and within the scope of its corporate powers.

\_\_\_\_\_(CORPORATE SEAL)

\_\_\_\_\_(SIGNATURE)

**B. AUTHORITY TO BIND PARTNERSHIP**

This is to certify that the names and signatures of all partners are listed below and that the person signing the proposal had authority to actually bind the partnership pursuant to its partnership agreement. Each of the partners individually has full authority to enter into and execute contractual instruments on behalf of said partnership, with the United States of America except as follows: (State "none" or describe limitations, if any). This authority shall remain in full force and effect until such time as the revocation of authority by any cause whatsoever has been furnished in writing to and acknowledged by the Contracting Officer.

(Names and signatures of all partners)

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

**ATTACHMENT 2**

**PAST PERFORMANCE OVERVIEW SHEET**

List work which best illustrates current qualifications relevant to this award. In addition to any “recent” and “relevant” projects as described in Factor 3, each project listed on this sheet must match a project submitted in Factor 1 and have a completed Project Summary Form (Attachment 3).

Mark Prime, Sub, or Joint Venture (ONLY ONE).

Contract Name/Client, Location of Services	Prime	Sub	JV	Total Contract \$ Amount	Offerors Share of Responsibility for Total Construction Contract
<b>SAMPLE:</b> Ellis Island Seawall Renovation/			X	\$10,000,000	\$10,000,000
1.					
2					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
<b>OFFERORS NAME</b>			<b>DATE</b>		



**ATTACHMENT 3**  
**PROJECT SUMMARY FORM**

**PROJECT TYPE:** Design-Bid-Build / Design-Build

**Project Title:** \_\_\_\_\_

**Contract Number:** \_\_\_\_\_

**Name of Prime Contractor on Project:** \_\_\_\_\_

**Prime Contractor's POC:** \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Location of Project:** \_\_\_\_\_

**Contract Amount (U.S. Dollar Amount):** \_\_\_\_\_

**Contract Award Date:** \_\_\_\_\_

**Contract Completion Date:** \_\_\_\_\_

**Contract Duration (Period of Performance):** \_\_\_\_\_

**Description of the Project's Scope and Magnitude:** \_\_\_\_\_

**Details of your company's role and activities during construction of the project: (Describe your role in this project. Include whether your firm participated as a prime or a subcontractor.)**

\_\_\_\_\_

**Provide details for any past performance problems encountered and the corrective actions taken.**

\_\_\_\_\_

\_\_\_\_\_

## ATTACHMENT 4

## PAST PERFORMANCE QUESTIONNAIRE (PPQ)

USACE PAST PERFORMANCE QUESTIONNAIRE (Form PPQ)	
CONTRACT INFORMATION (Contractor is to complete Blocks 1-4)	
<b>1. Contractor Information</b>	
Firm Name:	CAGE Code:
Address: DUNs Number:	
Phone Number:	
Email Address:	
Point of Contact:	Contact Phone Number:
<b>2. Work Performed as:</b> <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Sub Contractor <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other (Explain)	
Percent of project work performed:	
If subcontractor, who was the prime (Name/Phone #):	
<b>3. Contract Information</b>	
Contract Number:	
Delivery/Task Order Number (if applicable):	
Contract Type: <input type="checkbox"/> Firm Fixed Price <input type="checkbox"/> Cost Reimbursement <input type="checkbox"/> Other (Please specify):	
Contract Title:	
Contract Location:	
Award Date (mm/dd/yy):	
Contract Completion Date (mm/dd/yy):	
Actual Completion Date (mm/dd/yy):	
Explain Differences:	
Original Contract Price (Award Amount):	
Final Contract Price (to include all modifications, if applicable):	
Explain Differences:	
<b>4. Project Description:</b>	
Complexity of Work <input type="checkbox"/> High <input type="checkbox"/> Med <input type="checkbox"/> Routine	
What project in Factor 1, is this project being used to qualify for? (One project can be used to qualify for more than one factor)	
How is this project relevant to project of submission? (Please provide details such as similar equipment, requirements, conditions, etc.)	
CLIENT INFORMATION (Client is to complete Blocks 5-8)	
<b>5. Client Information</b>	
Name:	
Title:	
Phone Number:	
Email Address:	
<b>6. Describe the client's role in the project:</b>	
<b>7. Date Questionnaire was completed (mm/dd/yy):</b>	

**8. Client's Signature:**

**NOTE: USACE REQUESTS THAT THE CLIENT COMPLETES THIS QUESTIONNAIRE AND SUBMITS DIRECTLY BACK TO THE OFFEROR. THE OFFEROR WILL SUBMIT THE COMPLETED QUESTIONNAIRE TO USACE WITH THEIR PROPOSAL, AND MAY DUPLICATE THIS QUESTIONNAIRE FOR FUTURE SUBMISSION ON USACE SOLICITATIONS. CLIENTS ARE HIGHLY ENCOURAGED TO SUBMIT QUESTIONNAIRES DIRECTLY TO THE OFFEROR. HOWEVER, QUESTIONNAIRES MAY BE SUBMITTED DIRECTLY TO USACE. PLEASE CONTACT THE OFFEROR FOR USACE POC INFORMATION. THE GOVERNMENT RESERVES THE RIGHT TO VERIFY ANY AND ALL INFORMATION ON THIS FORM.**

**ADJECTIVE RATINGS AND DEFINITIONS TO BE USED TO BEST REFLECT  
YOUR EVALUATION OF THE CONTRACTOR'S PERFORMANCE**

<b>RATING</b>	<b>DEFINITION</b>	<b>NOTE</b>
<b>(E) Exceptional</b>	Performance meets contractual requirements and exceeds many to the Government/Owner's benefit. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the contractor was highly effective.	An Exceptional rating is appropriate when the Contractor successfully performed multiple significant events that were of benefit to the Government/Owner. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there should have been NO significant weaknesses identified.
<b>(VG) Very Good</b>	Performance meets contractual requirements and exceeds some to the Government's/Owner's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor were effective.	A Very Good rating is appropriate when the Contractor successfully performed a significant event that was a benefit to the Government/Owner. There should have been no significant weaknesses identified.
<b>(S) Satisfactory</b>	Performance meets minimum contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.	A Satisfactory rating is appropriate when there were only minor problems, or major problems that the contractor recovered from without impact to the contract. There should have been NO significant weaknesses identified. Per DOD policy, a fundamental principle of assigning ratings is that contractors will not be assessed a rating lower than Satisfactory solely for not performing beyond the requirements of the contract.
<b>(M) Marginal</b>	Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the contractor has not yet identified corrective actions. The contractors proposed actions appear only marginally effective or were not fully implemented.	A Marginal is appropriate when a significant event occurred that the contractor had trouble overcoming which impacted the Government/Owner.
<b>(U) Unsatisfactory</b>	Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains serious problem(s) for which the contractor's corrective actions appear or were ineffective.	An Unsatisfactory rating is appropriate when multiple significant events occurred that the contractor had trouble overcoming and which impacted the Government/Owner. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating.
<b>(N) Not Applicable</b>	No information or did not apply to your contract	Rating will be neither positive nor negative.

**TO BE COMPLETED BY THE CLIENT**

**PLEASE CIRCLE THE ADJECTIVE RATING WHICH BEST REFLECTS YOUR EVALUATION OF THE CONTRACTOR'S PERFORMANCE.**

<b>1. QUALITY</b>	
a) Quality of technical data/report preparation efforts	E VG S M U N
b) Ability to meet quality standards specified for technical performance	E VG S M U N
c) Timeliness/effectiveness of contract problem resolution without extensive customer guidance	E VG S M U N
d) Adequacy/effectiveness of quality control program and adherence to contract quality assurance requirements (without adverse effect on performance)	E VG S M U N
<b>2. SCHEDULE/TIMELINESS OF PERFORMANCE:</b>	
a) Compliance with contract delivery/completion schedules including any significant intermediate milestones. <i>(If liquidated damages were assessed or the schedule was not met, please address below)</i>	E VG S M U N
b) Rate the contractor's use of available resources to accomplish tasks identified in the contract	E VG S M U N
<b>3. CUSTOMER SATISFACTION:</b>	
a) To what extent were the end users satisfied with the project?	E VG S M U N
b) Contractor was reasonable and cooperative in dealing with your staff (including the ability to successfully resolve disagreements/disputes; responsiveness to administrative reports, businesslike and communication)	E VG S M U N
c) To what extent was the contractor cooperative, businesslike, and concerned with the interests of the customer?	E VG S M U N
d) Overall customer satisfaction	E VG S M U N
<b>4. MANAGEMENT/ PERSONNEL/LABOR</b>	
a) Effectiveness of on-site management, including management of subcontractors, suppliers, materials, and/or labor force?	E VG S M U N
b) Ability to hire, apply, and retain a qualified workforce to this effort	E VG S M U N
c) Government Property Control	E VG S M U N
d) Knowledge/expertise demonstrated by contractor personnel	E VG S M U N
e) Utilization of Small Business concerns	E VG S M U N
f) Ability to simultaneously manage multiple projects with multiple disciplines	E VG S M U N
g) Ability to assimilate and incorporate changes in requirements and/or priority, including planning, execution and response to Government changes	E VG S M U N
h) Effectiveness of overall management (including ability to effectively lead, manage and control the program)	E VG S M U N
<b>5. COST/FINANCIAL MANAGEMENT</b>	
a) Ability to meet the terms and conditions within the contractually agreed price(s)?	E VG S M U N
b) Contractor proposed innovative alternative methods/processes that reduced cost, improved maintainability or other factors that benefited the client	E VG S M U N
c) If this is/was a Government cost type contract, please rate the Contractor's timeliness and accuracy in submitting monthly invoices with appropriate back-up documentation, monthly status reports/budget variance reports, compliance with established budgets and avoidance of significant and/or unexplained variances (under runs or overruns)	E VG S M U N
d) Is the Contractor's accounting system adequate for management and tracking of costs? <i>If no, please explain in Remarks section.</i>	Yes No
e) If this is/was a Government contract, has/was this contract been partially or completely terminated for default or convenience or are there any pending terminations? <i>Indicate if show cause or cure notices were issued, or any default action in comment section below.</i>	Yes No

f) Have there been any indications that the contractor has had any financial problems? <i>If yes, please explain below.</i>	Yes	No
<b>6. SAFETY/SECURITY</b>		
a) To what extent was the contractor able to maintain an environment of safety, adhere to its approved safety plan, and respond to safety issues? (Includes: following the users rules, regulations, and requirements regarding housekeeping, safety, correction of noted deficiencies, etc.)	E	VG S M U N
b) Contractor complied with all security requirements for the project and personnel security requirements.	E	VG S M U N
<b>7. GENERAL</b>		
a) Ability to successfully respond to emergency and/or surge situations (including notifying COR, PM or Contracting Officer in a timely manner regarding urgent contractual issues).	E	VG S M U N
b) Compliance with contractual terms/provisions ( <i>explain if specific issues</i> )	E	VG S M U N
c) Would you hire or work with this firm again? ( <i>If no, please explain below</i> )	Yes	No
d) In summary, provide an overall rating for the work performed by this contractor.	E	VG S M U N

**Please provide responses to the questions above (if applicable) and/or additional remarks. Furthermore, please provide a brief narrative addressing specific strengths, weakness, deficiencies, or other comments which may assist our office in evaluating performance risk.**

#### ATTACHMENT 5

#### PROPOSAL SCHEDULE AND COST BREAKDOWN SHEET

The Proposal Schedule and Cost Breakdown Sheet have been included separately as attachments in PDF and excel format.

#### ATTACHMENT 6

## PERFORMANCE SURETY

### A. BANK LETTER OF GUARANTEE

(1) Within twenty-two (22) calendar days after the date of the contract, the Contractor shall furnish the Contracting Officer a Bank Letter of Guarantee (BLG or Letter of Guarantee) for the performance of work, in the amount of ten percent (10%) or \$3 Million U.S. Dollars, whichever is less of the contract price conforming to the exact format as the sample BLG attached to this solicitation. The Letter of Guarantee shall be dated as of the contract date or no more than fifteen (15) calendar days thereafter. The Letter of Guarantee shall state that it will continue in effect for three hundred sixty five (365) calendar days after the date the last work under the contract is accepted by the Government. The Letter of Guarantee shall also state that the bank agrees and consents that the contract may be modified by a change order or supplemental agreement without affecting the validity of the Letter of Guarantee. The provisions of paragraph (g) of the Contract Clause, 52.232-5, titled "PAYMENTS UNDER FIXED PRICE CONSTRUCTION CONTRACTS (MAY 2014) applies to letters of Guarantee.

NOTE: FAR Clause 52.232-5 does not provide for reimbursement to the contractor for premiums above and beyond the contract amount.

(2) Notice to Proceed will not be issued until the contractor has submitted a properly formatted and executed Bank Letter of Guarantee.

(3) The Performance surety **must** be issued on the Government provided Performance Surety Bank Letter of Guarantee form and be issued by any of the following Kingdom of Jordan banks:

- (a) Bank of Jordan
- (b) Arab Bank
- (c) Cairo Amman Bank
- (d) Capital Bank of Jordan
- (e) Jordan Ahli Bank (Formally known as Jordan National Bank)
- (f) Arab Jordan Investment Bank
- (g) Jordan Islamic Bank
- (h) Citibank, N.A. Jordan
- (i) Central Bank of Jordan
- (j) Bank al Etihad

(End of Requirement)

**B. SAMPLE PERFORMANCE SURETY BANK LETTER OF GUARANTEE:**

**BANK LETTER OF GUARANTEE**

[Bank Letterhead]

[Place]

[Date]

To: U.S. Army Corps of Engineers, Transatlantic Middle East District  
Attn: Ryan K. Gregory  
Contracting Officer  
P.O. Box 2250  
Winchester, Virginia 22601-1450

Letter of Guarantee No. \_\_\_\_\_

The undersigned, acting as the duly authorized representative of the bank, declares that the bank hereby guarantees to effect payment to the Contracting Officer by check made payable to the Treasurer of the United States, within five (5) days after receipt of a written request from the Contracting Officer, immediately and entirely without any need for the Contracting Officer to protest or to take any legal action or obtain the prior consent of the Contractor or for any other proof, action or decisions by any other authority, up to the sum of (Amount Equal to ten percent (10%) or \$3 Million U.S. Dollars, whichever is less of the contract price in U.S. Dollars) which represents the deposit required of the Contractor to guarantee fulfillment of his obligations for the satisfactory, complete, and timely performance of the work under Contract (Contract No.) for (Description of Work) at (Location of Work) in strict compliance with the terms, conditions and specifications of said contract, entered into between the Government and (Name of Contractor) of (Address of Contractor) on (Contract Date), plus interest of 10.25% per annum on the amount called due, calculated from the sixth day following receipt of the Contracting Officer's written request until the date of payment.

The undersigned agrees and consents that said contract may be modified by Change Order or Supplemental Agreement without affecting the validity of this guarantee provided, however, that the amount of this guarantee shall remain unchanged.

The Letter of Guarantee will remain in effect at an amount equal to ten percent (10%) or \$3 Million U.S. Dollars, whichever is less of the original contract price until Anticipated Completion Date or until the work has been finally accepted by the Government, whichever occurs first, and it will continue in effect thereafter, for three hundred sixty five (365) calendar days in an amount equal to ten percent (10%) or \$3 Million U.S. Dollars, whichever is less of the original contract price, after which time the guarantee shall become null and void whether returned to the undersigned or not.

The obligation of the bank guarantor to make payment under this Letter of Guarantee upon the Contracting Officer's demand is unconditional and not subject to any defense, based on alleged invalidity of this guarantee, invalidity of the contract between the United States and the party on whose behalf this guarantee was issued, lack of failure of consideration, or any other circumstances or representations not contained within this Letter of Guarantee.

This Bank Letter of Guarantee shall be governed by and interpreted in accordance with the laws of the State of New York, without regard to its conflict of laws principles. The exclusive forum for resolution of any and all disputes arising from or related to this Bank Letter of Guarantee shall be the United States District Court for the District of Columbia.



Signed By: \_\_\_\_\_  
 [NAME TYPED BELOW SIGNATURE]

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

NOTE: Certificate of Authority is attached evidencing authority of the signers to bind the Bank in this document.

## ATTACHMENT 7

### PAYMENT SURETY

#### A. BANK LETTER OF GUARANTEE

(1) Within twenty-two (22) calendar days after the date of the contract, the Contractor shall furnish the Contracting Officer a Bank Letter of Guarantee (BLG or Letter of Guarantee) for the payment of work, in the amount of ten percent (10%) or \$3 Million U.S. Dollars, whichever is less of the contract price conforming to the exact format as the sample BLG attached to this solicitation. The Letter of Guarantee shall be dated as of the contract date or no more than fifteen (15) calendar days thereafter. The Letter of Guarantee shall state that it will continue in effect for three hundred sixty five (365) calendar days after the date the last work under the contract is accepted by the Government. The Letter of Guarantee shall also state that the bank agrees and consents that the contract may be modified by a change order or supplemental agreement without affecting the validity of the Letter of Guarantee. The provisions of paragraph (g) of the Contract Clause, 52.232-5, titled "PAYMENTS UNDER FIXED PRICE CONSTRUCTION CONTRACTS (MAY 2014) applies to letters of Guarantee.

NOTE: FAR Clause 52.232-5 does not provide for reimbursement to the contractor for premiums above and beyond the contract amount.

(2) Notice to Proceed will not be issued until the contractor has submitted a properly formatted and executed Bank Letter of Guarantee.

(3) The Bid surety **must** be issued on the Government provided Bid Surety Bank Letter of Guarantee form and be issued by any of the following Kingdom of Jordan banks:

- (a) Bank of Jordan
- (b) Arab Bank
- (c) Cairo Amman Bank
- (d) Capital Bank of Jordan
- (e) Jordan Ahli Bank (Formally known as Jordan National Bank)
- (f) Arab Jordan Investment Bank
- (g) Jordan Islamic Bank
- (h) Citibank, N.A. Jordan
- (i) Central Bank of Jordan
- (j) Bank al Etihad

(End of Requirement)

#### B. SAMPLE PAYMENT SURETY BANK LETTER OF GUARANTEE:

**BANK LETTER OF GUARANTEE**

[Bank Letterhead]

[Place]

[Date]

To: U.S. Army Corps of Engineers, Transatlantic Middle East District  
Attn: Ryan K. Gregory  
Contracting Officer  
P.O. Box 2250  
Winchester, Virginia 22601-1450

Letter of Guarantee No. \_\_\_\_\_

The undersigned, acting as the duly authorized representative of the bank, declares that the bank hereby guarantees to effect payment to the Contracting Officer by check made payable to the Treasurer of the United States, within five (5) days after receipt of a written request from the Contracting Officer, immediately and entirely without any need for the Contracting Officer to protest or to take any legal action or obtain the prior consent of the Contractor or for any other proof, action or decisions by any other authority, up to the sum of (Amount Equal to ten percent (10%) or \$3 Million U.S. Dollars, whichever is less of the contract price in U.S. Dollars) which represents the deposit required of the Contractor to guarantee fulfillment of his obligations for the satisfactory, complete, and timely payment of the work under Contract (Contract No.) for (Description of Work) at (Location of Work) in strict compliance with the terms, conditions and specifications of said contract, entered into between the Government and (Name of Contractor) of (Address of Contractor) on (Contract Date), plus interest of 10.25% per annum on the amount called due, calculated from the sixth day following receipt of the Contracting Officer's written request until the date of payment.

The undersigned agrees and consents that said contract may be modified by Change Order or Supplemental Agreement without affecting the validity of this guarantee provided, however, that the amount of this guarantee shall remain unchanged.

The Letter of Guarantee will remain in effect at an amount equal to ten percent (10%) or \$3 Million U.S. Dollars, whichever is less of the original contract price until Anticipated Completion Date or until the work has been finally accepted by the Government, whichever occurs first, and it will continue in effect thereafter, for three hundred sixty five (365) calendar days in an amount equal to ten percent (10%) or \$3 Million U.S. Dollars, whichever is less of the original contract price, after which time the guarantee shall become null and void whether returned to the undersigned or not.

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This Bank Letter of Guarantee shall be governed by and interpreted in accordance with the laws of the State of New York, without regard to its conflict of laws principles. The exclusive forum for resolution of any and all disputes arising from or related to this Bank Letter of Guarantee shall be the United States District Court for the District of Columbia.

Signed By: \_\_\_\_\_  
[NAME TYPED BELOW SIGNATURE]

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

NOTE: Certificate of Authority is attached evidencing authority of the signers to bind the Bank in this document.

**ATTACHMENT 8  
Non-Collusive Pricing Certification**

By submission of this proposal, each offeror and each person signing on behalf of any offeror certifies that he or she has fully informed himself or herself regarding the accuracy of the statements contained in this certification, and under the penalties of perjury, affirms the truth thereof, such penalties being applicable to the offeror as well as to the person signing on its behalf:

1. The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;
2. Unless otherwise directed by law, the prices which have been quoted in this proposal have not been knowingly disclosed (directly or indirectly) by the offeror and will not knowingly be disclosed (directly or indirectly) by the offeror prior to contract award to any other offeror or to any competitor; and
3. No attempt has been made or will be made by the offeror to induce any other person, partnership, or corporation to submit or not to submit a proposal for the purpose of restricting competition.

The foregoing statements are subscribed by the offeror and affirmed by such offeror as true under the penalties of perjury.

**This certification must be sworn and signed by the same person who signed the SF 1442 (proposal document) on behalf of the offeror.**

Signed this \_\_\_\_ date of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Corporate Seal

**ATTACHMENT 9  
PERFORMANCE DISTRIBUTION STATEMENT**

*Although not all subcontractors need to be listed, statement **must** include all major subcontractors, defined as those performing 10% or more of the total dollar value (\$) of the contract.*

*Add more lines, if needed, to list more subcontractors.*

*The total “% of Work” column **cannot** total more than 100%.*

*REMINDER: All subcontractors completing 10% or more of the work require a letter of intent to be submitted.*

*See example below for details.*

Line	Company / Entity	Role	Scope of Work	% of Work
1	ABC Company	Offeror	Management, safety, QC, paving, surveying, masonry, misc.	50%
2	Hamid & Sons, Inc.	Major Sub	MEP	20%

3	Overhead Door Co.	Major Sub	Specialty roll-up doors	15%
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Line	Company / Entity	Role	Scope of Work	% of Work
1		Offeror		
2				
3				
4				
5				

**ATTACHMENT 10****CONTRACTOR RESPONSIBILITY**

Directorate of Contracting

Dear Offeror:

As required by the Federal Acquisition Regulation (FAR) part 9 Contractor Qualifications, and Defense Federal Acquisition Regulation Supplement (DFARS) part 209, the Contracting Officer is conducting a responsibility determination and requires information from your firm as outlined below.

**Information Regarding Responsibility**

Determinations of responsibility involve subjective business judgments that are within the broad discretion of the contracting agency. The Contracting Officer is vested with broad discretion in exercising the business judgment involved in a responsibility determination.

This Questionnaire is not an additional non-pricing factor; the information requested below pertains to the offerors ability to perform the contract (if awarded) rather than the acceptability of the offer presented. Your responses to this Questionnaire will assist the Contracting Officer in making their responsibility determination. It is the duty of the offeror to supply all necessary documentation to establish its responsibility.

While this Questionnaire uses the term "offeror," know that when determining an offerors responsibility, the Contracting Officer is required by the FAR to look at entities with relationships to the offeror, including (but not limited to) affiliates, subsidiaries, principals, and key personnel. As a result, in some cases, this Questionnaire seeks information regarding individuals that are connected to the offeror (generally key personnel, principals, etc.) as well as information regarding the offerors corporate relationships (generally affiliated concerns, subsidiaries, etc.). See FAR 19.001 and 19.101 for definitions regarding affiliated concerns; and see FAR 52.209-5 -- Certification Regarding Responsibility Matters for definitions regarding offeror principals.

If the offeror is proposing as a Joint Venture (JV), each member of the JV shall respond to this questionnaire independently.

When responding to questions that have a fixed time period (e.g. a question that requests information related to any event "in the past five years") calculate the time period duration from the date that you submit your response to this Questionnaire.

Be advised that this Questionnaire, or any follow up communication by the Agency regarding your response to this Questionnaire, does not constitute discussions, negotiations, or clarifications, as contemplated in FAR part 15.

The documentation requirements in this Questionnaire regarding page limitation, etc., apply to your response to this request, unless otherwise noted. Please be advised that all, or portions of your response, to this request for information may be incorporated into the awarded contract, should award be made to your firm.

The Contracting Officer is not limited to your responses in making a responsibility determination. The Contracting Officer must determine a prospective contractor non-responsible in the absence of adequate and timely information clearly indicating the contractor is responsible. Your inability or unwillingness to provide this information will be considered in making this responsibility determination, and may result in a finding of non-responsibility.

**Information Upon Which The Responsibility Determination Will Be Based**

To facilitate the Contracting Officer's responsibility determination, please:

- a) Complete and return:
  - 1) Endorsement A (Financial Standing Questionnaire) and
- b) Provide a narrative (not exceeding two pages) that states:
  - 1) the offerors current credit rating;
  - 2) evidence of the offerors financial resources (or to obtain such resources) to successfully perform the contract, considering all other outstanding obligations of the offeror; and
  - 3) whether the offeror has ever petitioned a government body to have its debts restructured, forgiven, liquidated, or otherwise dispatched in an insolvency proceeding (e.g. filed for bankruptcy, or non-U.S. equivalent, including "liquidation" or "administration"), in any jurisdiction, at any time in the past five years, regardless of the ultimate resolution.

If the answer is in the affirmative relative to the filing of an insolvency proceeding, identify:

- 1) the country where the matter was filed;
- 2) the court or forum in which it was filed;

- 3) the assigned case number;
- 4) the date of filing;
- 5) when matter was resolved; and
- 6) how it was resolved.

c) Provide a narrative (which does not exceed five pages) regarding the offerors record of integrity and business ethics. At a minimum, your narrative must address:

1) whether at any time in the past five years, the offeror has any subcontractors or suppliers that have been unpaid for a duration longer than the time required by the contract for payment. If the answer is in the affirmative, explain why payments to subcontractors or suppliers exceed the contractually allowed for payment timeline;

2) whether the offeror has ever been contacted by a Contracting Officer, Administrative Contracting Officer, Contracting Officer's Representative, or any other U.S. Government employee, regarding any Combating Trafficking in Persons (CTIP) concern. In your response, identify the issue, the resolution, and the contract number;

3) whether there have been any criminal convictions, in the last five years, of any of the offerors principals, owners, officers, any individuals identified as a Key Personnel in response to a non-pricing factor, or any person with any contractual authority on the resultant contract, if awarded; and

4) any findings or citations by a judicial body or regulatory entity that the offeror has committed a violation of law or regulation, in any jurisdiction, regardless of resolution, in the last 5 years.

d) Provide the names and DUNS numbers (if any) of all of the offerors current owners, predecessors (within last 3 years), subsidiaries, and affiliated concerns that will be used in the performance of the resultant contract, if awarded. This is in accordance with FAR 52.209-5 -- Certification Regarding Responsibility Matters.

e) Provide the first and last name (and middle initial, if applicable) and job title of:

1) all of the offerors principals;

2) any person identified as a key personnel in response to any non-pricing evaluation criteria, if such is required; and

3) any person with any contractual authority on the resultant contract, if awarded.

f) The Offeror shall provide a copy of a valid Jordan Commercial Registration Certificate (business license) in the offerors name for which it is submitting a proposal (as required by DFARS 252.225-7042 Authorization to Perform). If the name on the certificate does not match the name in which the proposal is submitted, the offeror shall submit documentation explaining the reason for the discrepancy and proof of the offerors legal ability to operate under the certificate. If the offeror has a business license that will expire on or before May 15, 2020, the estimated date of award, the questionnaire shall include the offerors supported plan to extend and/or renew the certificate. A descriptive narrative, if required, shall be limited to no more than two (2) pages.

g) The offeror shall designate an individual to be responsible for CTIP compliance and a CTIP compliance plan implementation that complies with FAR Clause 52.222-50. The designated position shall have the necessary authority to ensure compliance at all levels of the company and throughout the supply chain, and be able to ensure the accuracy of its certification to the Government. Additionally, the offeror shall submit a certification regarding trafficking in persons compliance in accordance with FAR Clause 52.222-56 paragraph (c).

**Submission Requirements:**

Please complete the above requested information as Volume III. In your response, please identify which documents are responsive to which subpart; however the Contracting Officer is not limited to your identification and may use any submitted document in response to any subpart as (s)he deems appropriate.

The Contracting Officer may require that some or all of these responses be updated in advance of award, should your firm be chosen for award.

The Responsibility Determination Questionnaire, Volume III, must be submitted electronically with your proposal submission.

Endorsement:

A - Financial Standing Questionnaire

**ENDORSEMENT A****FINANCIAL STANDING QUESTIONNAIRE**

A primary consideration in the source selection process is to determine an offerors qualification, responsibility, and financial standing. Prior to awarding a contract, per Federal Acquisition Regulation (FAR) Part 9, the Government must determine, through acceptable evidence, that an offeror has adequate financial resources, or the ability to obtain the financial resources, to perform the contract. The substantive answers in Attachment A are to be completed by the offerors financial institution. Offerors should obtain a bank stamp or seal AND signature of the referenced individual on the questionnaire. Failure to provide the requested information may render an offerors proposal non-responsible, and cause it to be removed from competition.

**GENERAL INFORMATION (to be completed by the contractor):**

Contractor's Name and address:

Point of Contact:

Telephone:

Email:

Solicitation number:

**RESPONDENT INFORMATION (to be completed by an authorized Financial Institution representative):**

Full Name and Title:

Name of Financial Institution:

Address:

Telephone/Fax:

Email address:

1. Does the contractor have an active account(s) with your financial institution? If yes, how many?
2. How long have the account(s) been active?
3. What are the account(s) average balance (digits only)?
4. How many returns (insufficient funds) has the contractor had in the last 12 months?
5. Does the contractor currently have outstanding loans? If yes, a) how many; b) what are the balances due on those loans (digits only); and c) is the contractor making payments in accordance with the terms of the loans?



6. In the last 12 months, has the contractor been able to meet its financial obligations on time?

7. Does the contractor have a line of credit? If so, a) what is the credit limit (digits only); and b) how much credit is presently available for use (digits only)?

If you need additional space to respond, please indicate that additional documentation was provided in response your above answers.

**Certificate of Authority**

I, \_\_\_\_\_ certify that as \_\_\_\_\_ of  
(Insert name) (Insert job title)

\_\_\_\_\_ I am duly authorized to execute this form.  
(Insert corporation name)

Signature \_\_\_\_\_ Date \_\_\_\_\_

(Financial Institution Seal/Stamp)

**TAX ON FOREIGN PROCUREMENT**

Special Contract Requirements:

1) FAR provision 52.229-11 and FAR clause 52.229-12

FAR provision 52.229-11 and FAR clause 52.229-12 are included in this solicitation. This provision and clause concern the imposition of a 2 percent Federal excise tax withholding on any resultant contract award or payment request. This rule applies to Federal Government contracts for goods or services that are awarded to foreign persons – such as foreign contractors. It implements the Department of the Treasury’s final regulations published in the Federal Register at 81 FR 55133 on August 18, 2016, under section 5000C of the Internal Revenue Code relating to the 2 percent tax on payments made by the U.S. Government to foreign persons pursuant to certain contracts.

Pursuant to the FAR 52.229-3 Federal, State, and Local Taxes, taxes imposed under 26 U.S.C. 5000 C may not be included in the contract price or reimbursed.

Exemptions from this excise tax must be claimed by an Offeror when it submits, with its offer, a U.S. Department of Treasury Internal Revenue Service (IRS) Form W-14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments, available via the internet at [www.irs.gov/W14](http://www.irs.gov/W14). If not submitted with the offer, exemptions will not be applied to any resulting contract and the Government will withhold a full 2 percent on each contract payment. Failure to submit an IRS Form W-14 with each payment request will also result in an automatic withholding of 2 percent from the payment request.

When filling out the IRS Form W-14 the following information may be used to complete Part I, Lines 6 and 7.

Line 6 Contract/reference number: W912ER-22-R-0007

Line 7 "Name and address of the acquiring agency":

Name: The U.S. Army Corps of Engineers Transatlantic Middle East District  
City or town, state or province: Box 2250 Winchester, VA 22604-1450  
Country (do not abbreviate): United States

Any exemption claimed and self-certified is subject to audit by the IRS. Any disputes concerning this tax are adjudicated by the IRS because the Section 5000C tax is a tax matter not a contract issue.

Offerors are encouraged to seek guidance from their own tax professionals for advice concerning the provision, clause, and exclusions exclusion/submission of IRS Form W-14. Additional information is also available at:

Notwithstanding the above, the USACE Middle East District does not have a means of withholding this excise tax at this time. As a result, contractors are expected to comply with the instructions above and to properly complete and return the W-14 at proposal submission, and with each pay application. The amount due for each withholding will be confirmed by USACE, BUT WILL NOT BE WITHHELD. It is the contractor's responsibility to set aside, or remit to the IRS, the amount confirmed by USACE. Whether the contractor sets the money aside for future payment to the IRS, or makes payment to the IRS, is the contractor's discretion, based on its analysis of the regulations regarding the excise tax. In the event that USACE is able to withhold during contract performance, it will notify the contractor and make such a withholding (including any catch up withholdings); no advance notice is required to the contractor prior to the withholding. Under no circumstances is USACE liable for any tax not paid by the contractor. The contractor is liable for the tax, to the extent required by law, regardless of whether USACE makes a withholding.

FAR 29.204 expressly states that "[a]gencies merely withhold the tax (section 5000C tax) for the Internal Revenue Service (IRS). All substantive issues regarding the underlying section 5000C tax, e.g., the imposition of, and exemption from the tax, are matters under the jurisdiction of the IRS." Therefore, we cannot help you determine how the tax law applies to you. We strongly recommend that you contact the IRS and/or a tax professional should you have any questions of this nature. To be clear, this letter does not constitute tax advice or a representation of your tax liability. Furnishing this information does not create liability for the U.S. Army Corps of Engineers for any Federal, state, or local taxes applicable to the above-referenced contract or any other contract.

\*\*\*\*\*

For submission requirements and basis of evaluation:

Executed FAR Provision 52.229-11.  
Completed IRS Form W-14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments, if applicable. If not submitted with the offer, exemptions will not be applied to any resulting contract and the Government will withhold a full 2 percent on each payment.