



<b>SOLICITATION, OFFER, AND AWARD (Continued)</b> <i>(Construction, Alteration, or Repair)</i>										
<b>OFFER (Must be fully completed by offeror)</b>										
<b>14. NAME AND ADDRESS OF OFFEROR</b> <i>(Include ZIP Code)</i>					<b>15. TELEPHONE NO.</b> <i>(Include area code)</i>					
					<b>16. REMITTANCE ADDRESS</b> <i>(Include only if different than Item 14)</i>  <b>See Item 14</b>					
CODE		FACILITY CODE								
<b>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.     <i>(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.)</i></b>										
AMOUNTS		SEE SCHEDULE OF PRICES								
<b>18. The offeror agrees to furnish any required performance and payment bonds.</b>										
<b>19. ACKNOWLEDGMENT OF AMENDMENTS</b> <i>(The offeror acknowledges receipt of amendments to the solicitation -- give number and date of each)</i>										
AMENDMENT NO.										
DATE										
<b>20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER</b> <i>(Type or print)</i>					<b>20B. SIGNATURE</b>				<b>20C. OFFER DATE</b>	
<b>AWARD (To be completed by Government)</b>										
<b>21. ITEMS ACCEPTED:</b>										
<b>22. AMOUNT</b>		<b>23. ACCOUNTING AND APPROPRIATION DATA</b>								
<b>24. SUBMIT INVOICES TO ADDRESS SHOWN IN</b> <i>(4 copies unless otherwise specified)</i>				<b>ITEM</b>	<b>25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO</b> <input type="checkbox"/> 10 U.S.C. 2304(c) <input type="checkbox"/> 41 U.S.C. 253(c)					
<b>26. ADMINISTERED BY</b>			CODE		<b>27. PAYMENT WILL BE MADE BY:</b> CODE					
<b>CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE</b>										
<input type="checkbox"/> <b>28. NEGOTIATED AGREEMENT</b> <i>(Contractor is required to sign this document and return _____ copies to issuing office.)</i> Contractor agrees to furnish and deliver all items or perform all work, 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.					<input type="checkbox"/> <b>29. AWARD</b> <i>(Contractor is not required to sign this document.)</i> Your offer on this solicitation, is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.					
<b>30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN</b> <i>(Type or print)</i>					<b>31A. NAME OF CONTRACTING OFFICER</b> <i>(Type or print)</i>					
<b>30B. SIGNATURE</b>			<b>30C. DATE</b>		TEL:			EMAIL:		
					<b>31B. UNITED STATES OF AMERICA</b> BY			<b>31C. AWARD DATE</b>		

Section 00 10 00 - Solicitation

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Construction of the Youth Center Annex: FFP All work, complete, (includes all plant, labor, equipment, material & security clearances) as described in the plans and specifications except for work included in items below. FOB: Destination PURCHASE REQUEST NUMBER: NAF2018YOUTHCENTER	1	Job		
					<hr/>
					NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002	Construction of the Youth Center Annex: FFP Site work, all work outside the five-foot line of the building perimeter, excluding the Items below. FOB: Destination PURCHASE REQUEST NUMBER: NAF2018YOUTHCENTER	1	Job		
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					NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003	Construction of the Youth Center Annex: FFP As-Built-Final Record Drawing Submission Pre-Priced \$25,000	1	Job		
	FOB: Destination PURCHASE REQUEST NUMBER: NAF2018YOUTHCENTER				

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004 OPTION	Optional Item #1 FFP Construction of the Youth Center Annex: Additional parking, all work, complete, as identified in the drawings FOB: Destination PURCHASE REQUEST NUMBER: NAF2018YOUTHCENTER	1	Job		

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0005 OPTION	Optional Item #2 FFP Construction of the Youth Center Annex: Hard Surface Installation at the Outdoor Play Area, all work, equipment, complete as identified in the drawings FOB: Destination PURCHASE REQUEST NUMBER: NAF2018YOUTHCENTER	1	Job		

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0006		1	Job		
OPTION	Optional Item #3 FFP Construction of the Youth Center Annex: Installation of a Play Surface & the Playground Equipment, complete, as described in the plans and specifications FOB: Destination PURCHASE REQUEST NUMBER: NAF2018YOUTHCENTER				

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0007		1	Job		
OPTION	Optional Item #4 FFP Construction of the Youth Center Annex: Install HVAC Hyper Heat System, complete, as identified in the plans and specifications FOB: Destination PURCHASE REQUEST NUMBER: NAF2018YOUTHCENTER				

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0008 OPTION	Optional Item #5 FFP Construction of the Youth Center Annex: Purchase, Deliver, and Install ALL Furnishings, Appliances and equipment, as shown in the table on Drawing A8.02 and also described in FF&E Package. FOB: Destination PURCHASE REQUEST NUMBER: NAF2018YOUTHCENTER	1	Job		

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NET AMT

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0009 OPTION	Optional Item #6 FFP Construction of the Youth Center Annex: Install Furnishings and Appliances (GFCI), only for items as shown and designated in the table on Drawing A8.02 and described in FF&E Package. FOB: Destination PURCHASE REQUEST NUMBER: NAF2018YOUTHCENTER	1	Job		

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NET AMT

**TOTALS**

**TOTAL BASE PRICE FOR CLINS 0001- 0003**

**TOTAL OPTIONS FOR CLINS 0004-0009**

**TOTAL AMOUNT - BASE & OPTIONAL ITEMS (CLINS 0001- 0009)**

**NOTES:**

1. Offerors are required to bid on all the Base Bid Line Items and all Optional Bid Line Items or their bids will be rejected.
2. Offerors are reminded that they must bid on the issued plans and specifications as amended. Any deviations, conditions or attachments made by the bidder himself, thereto, may render the bid non-responsive and be cause for its rejection.
3. CLIN 0003 is pre-priced at \$25,000.00 and this price shown may not be changed. See Section 00 73 00 for Final Record Drawing definition and requirement.
4. The Basis of Evaluation will be the lowest responsive, responsible bid based on the Total Amount which includes the Base Bid Items plus all the Optional Bid Items (Line Items 0001 thru 0009).

5. Options 1, 2, 3 and/or 5: At any time prior to 210 calendar days after issuance of the Notice to Proceed of the contract, the Government at its option, may direct the Contractor, by written order, to perform the work and/or services provided under this Option. Execution of this option will not alter the project completion date of the contract.
6. Option #4: At any time prior to 150 calendar days after issuance of the notice to proceed, the Government at its option, may direct the Contractor, by written order, to perform the work and/or services provided under this Option. Execution of this option will not alter the project completion date.
7. Option #6: At any time prior to 300 calendar days after issuance of the Notice to Proceed of the contract, the Government at its option, may direct the Contractor, by written order, to perform the work and/or services provided under this Option. Execution of this option will not alter the project completion date of the contract. Option #6 cannot be exercised if option #5 is exercised and vice versa.
8. The Bid Acceptance Period is 120 days as stated on Standard Form 1442 block #13D.

## CPARS

### Section 00 21 16 - INSTRUCTIONS, CONDITIONS AND NOTICE TO OFFEROR

The Federal Acquisition Regulation (FAR) requires that Past Performance Information (PPI) be collected on DoD Contracts. The Contractor Performance Assessment Reporting System (CPARS) is a web-enabled application that supports the completion, distribution and retrieval of all contract performance evaluations. Contractor Representatives are responsible for reviewing and commenting on evaluations submitted on the Contractor Performance Assessment Reporting System (CPARS) website at <https://www.cpars.gov/index.htm>.

### Veterans Employment Emphasis for U.S. Army Corps of Engineers Contracts

In addition to complying with the requirements outlined in FAR Part 22.13, FAR Provision 52.222-38, FAR Clause 52.222-35, FAR Clause 52.222-37, DFARS 222.13 and Department of Labor regulations, U.S. Army Corps of Engineers (USACE) contractors and subcontractors at all tiers are encouraged to promote the training and employment of U.S. veterans while performing under a USACE contract. While no set-aside, evaluation preference, or incentive applies to the solicitation or performance under the resultant contract, USACE contractors are encouraged to seek out highly qualified veterans to perform services under this contract. The following resources are available to assist USACE contractors in the outreach efforts:

Federal Veteran employment information at <http://www.fedshirevets.gov/index.aspx>

Department of Labor Veterans Employment Assistance <http://www.dol.gov/vets/>

Department of Veterans Affairs-VOW to Hire Heros Act <http://benefits.va.gov/vow/>

Army Wounded Warrior Program <http://wtc.army.mil/modules/employers/index.html>

U.S. Chamber of Commerce Foundation-Hiring Our Heros <http://www.hiringourheroes.org/>

Guide to Hiring Veterans-Reference Material

[http://www.whitehouse.gov/sites/default/files/docs/white\\_house\\_business\\_council\\_guide\\_to\\_hiring\\_veterans\\_0.pdf](http://www.whitehouse.gov/sites/default/files/docs/white_house_business_council_guide_to_hiring_veterans_0.pdf)

### GENERAL INSTRUCTIONS

**Electronic Submission:** In addition to the hard copies required in block 13 of the Standard Form 1442, the offeror shall submit his proposal on a CD-ROM. Written portions of the proposal shall be in MS Word or Adobe Acrobat PDF format. The electronic version shall be either a single file tabbed in the same order as the hard copy or multiple files hyperlinked to a single table of contents. Any portion of the proposal not available in electronic format i.e. cut sheets, if applicable should be scanned in Adobe Acrobat format, thus making it available electronically. The CD-ROM must be clearly labeled by solicitation number, project name, installation, and offeror's name. The CD-ROM shall be marked with a label stating "Unclassified/Controlled Unclassified Info.: In the event of any conflict between the electronic submission and the hard copy submission, the hard copy submission will govern and will be the material upon which the Government bases its evaluation and ultimately, its decision. Electronic media may be submitted in an un-editable format.

### OPSEC

#### References:

- Department of Defense Instruction (DoDI) O-2000.16, Vol. 1 DoD Antiterrorism (AT) Standards, 17 Nov 16, par. 3.20, Std 18

- Air Force Instruction (AFI) 10-245-O, Antiterrorism (AT) Program Implementation, 18 Jul 17, par. 3.20, Std 18
- Defense Federal Acquisition Regulation Supplement (DFARS), current DoD AT security requirements for defense contractors
- Joint Publication 3-07.2 Antiterrorism

Terrorism is defined as:

The calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological.

Antiterrorism - As a prelude and during performance of any contract, it is critical that the Contractor be supportive of all Department of Defense (DoD) requirements to protect personnel and their families, installations, facilities, information, and other resources from terrorist acts.

1. All Contractors and Sub-Contractors are responsible for providing their personnel information on the Joint Base McGuire-Dix-Lakehurst (JB MDL) Antiterrorism Program (AT). All contractors and sub-contractors will review the JB MDL AT Awareness Guide for Contractors pamphlet. During performance of work, personnel security and protection of resources is critical for the installation to maintain a safe and secure work environment. Contractors and contracted personnel will be alert for any suspicious activities while on the installation. If any situation appears to be suspicious, immediate actions must be taken to properly notify the 87th Security Forces Squadron (SFS) Emergency Control Center (ECC) at 609-754-6001.

2. Contractors must ensure that contracted personnel and vehicles are strictly controlled during performance of duty. For instance, contractors shall use reasonable efforts to prevent any personnel or equipment from being placed in harm's way or in a position that could aid or abet terrorists.

3. It is strongly recommended that all contracted personnel take the computer-based training (CBT) for the DoD-approved Antiterrorism Level I Training at <http://jko.jten.mil/courses/at11/launch.html>. Contractors are encouraged to contact the JB MDL Antiterrorism Office at 609-562-5362 for information regarding the installation Antiterrorism Program.

4. Force Protection Condition (FPCON) Impact on Work Levels: If the JB MDL FPCON level is elevated to Charlie, the installation shall evaluate the need for contract services to be discontinued. At FPCON Delta, services are discontinued. Services shall resume when the FPCON level has been lowered.

Administrative Note: In the event of an emergency, dial 9 1 1 from any land line on the installation. The call will be routed to the ECC (609-754-6001) on the Joint Base. If you use a cell phone and dial 9 1 1, you will be routed to the county 9 1 1 dispatch (Burlington County for McGuire and Dix or Ocean County for Lakehurst) and must inform the dispatcher that you are on JB MDL (i.e. McGuire, Dix, or Lakehurst). The county dispatcher will route your call directly to the JB MDL ECC.

Combating Trafficking in Persons (CTIP), DoDI 2200.01, 5 Apr 17

- Trafficking in persons (TIP) is defined as the recruitment, transportation, transfer, harboring, or receipt of persons by means of threat, use of force, coercion, abduction, fraud, deception, abuse, or exploitation
- Second largest criminal activity in the world
- DoD has established a ZERO tolerance for Trafficking In Persons

REMEMBER IF YOU SEE SOMETHING – SAY SOMETHING

REPORT SUSPICIOUS ACTIVITY TO 87 SFS AT 609-754-6001

All contractor employees, to include subcontractor employees, requiring access to Army installations, facilities, controlled access areas, or require network access, shall complete AT Level I awareness training within 30 calendar days after contract start date or effective date of incorporation of this requirement into the contract, whichever is applicable. Upon request, the contractor shall submit certificates of completion for each affected contractor employee and subcontractor employee, to the COR or to the contracting officer (if a COR is not assigned), within 5 calendar days after completion of training by all employees and subcontractor personnel. AT Level I awareness training is available at the following website: <http://jko.jten.mil/courses/at11/launch.html>; or it can be provided by the RA ATO in presentation form which will be documented via memorandum.

All contractor and all associated sub-contractors employees shall comply with applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by government representative). The contractor shall also provide all information required for background checks to meet



installation/facility access requirements to be accomplished by installation Provost Marshal Office, Director of Emergency Services or Security Office. Contractor workforce must comply with all personal identity verification requirements (FAR clause 52.204-9, Personal Identity Verification of Contractor Personnel) as directed by DOD, HQDA and/or local policy. In addition to the changes otherwise authorized by the changes clause of this contract, should the Force Protection Condition (FPCON) at any installation or facility change, the Government may require changes in contractor security matters or processes.

The contractor and all sub-contractors employees will be issued a CAC only if duties involve one of the following:

- (1) Both physical access to a DoD facility and access, via logon, to DoD networks on-site or remotely;
- (2) Remote access, via logon, to a DoD network using DoD-approved remote access procedures; or
- (3) Physical access to multiple DoD facilities or multiple non-DoD federally controlled facilities on behalf of the DoD on a recurring basis for a period of 6 months or more.

At the discretion of the sponsoring activity, an interim CAC may be issued based on a favorable review of the FBI fingerprint check and a successfully scheduled NACI at the Office of Personnel Management.

Contractor and all associated sub-contractors employees shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database (TSDB) (Army Directive 2014-05 / AR 190-13), applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by government representative, as NCIC and TSDB are available), or, at OCONUS locations, in accordance with status of forces agreements and other theater regulations.

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.

The contractor and all associated sub-contractors shall receive a brief/training (provided by the RA) on the local suspicious activity reporting program. This locally developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the project manager, security representative or law enforcement entity. This training shall be completed within 30 calendar days of contract award and within 30 calendar days of new employees commencing performance with the results reported to the COR NLT 5 calendar days after the completion of the training.

All new contractor employees will complete Level I OPSEC Training within 30 calendar days of their reporting for duty. Additionally, all contractor employees must complete annual OPSEC awareness training. The contractor shall submit certificates of completion for each affected contractor and subcontractor employee, to the COR or to the contracting officer (if a COR is not assigned), within 5 calendar days after completion of training. OPSEC awareness training is available at the following websites: <https://www.iad.gov/ioss/> or <http://www.cdse.edu/catalog/operations-security.html>; or it can be provided by the RA OPSEC Officer in presentation form which will be documented via memorandum.

All contract employees, including subcontractor employees who are not in possession of the appropriate security clearance or access privileges, will be escorted in areas where they may be exposed to classified and/or sensitive materials and/or sensitive or restricted areas.

#### NAF STATEMENT:

This is a non-appropriated fund purchase and it does not obligate appropriated funds of the United States Government. Non-appropriated funds are generated by the military community through the sale of goods and services and the collection of fees and charges for participation in military community programs. This purchase does not involve federal tax dollars.

#### SAM REGISTRATION:

**System for Award Management (SAM) Registration.** In order to be eligible for award, offerors must be registered in SAM and shall complete **Representations and Certifications** in the system: <https://www.sam.gov/>.

- If you are registering a new entity in SAM.gov, you must provide an original, signed notarized letter stating that you are the authorized Entity Administrator before your registration will be activated. Content of the letter and mailing address may be found the sam.gov website.
- Entities registered in SAM are advised to log into SAM and review their registration information, particularly their financial information, no later than 29 Apr 2018. Contact the supporting Federal Service Desk at [www.fsd.gov](http://www.fsd.gov), or by telephone at 866-606-8220 (toll free) or 334-206-7828 (internationally) Monday through Friday from 8 a.m. to 8 p.m. (EDT), for FREE assistance. Entities are responsible for ensuring that their information is current and correct in SAM.

#### FINANCIAL DATA:

Request for such information does not constitute contract award. Prior to award, an offer's financial information may be used to support a responsibility determination in accordance with NAF Procurement Policy and Procedure Para 7(b)(7). Offerors must submit:

- Name, address, and point of contact for all financial institutions / organizations utilized by the offeror. These organizations may be contacted by the NAFI to determine if the offeror has adequate financial resources to perform the contract.
- Written authority for the Government personnel to contact the financial institution.

#### CONTRACTOR RESPONSIBILITY:

Prior to an award, an offeror may be requested to provide business information for the purpose of a responsibility determination in accordance with AF Manual 64-302, Paragraph 6.10. Failure to provide requested information may result in a determination of non-responsibility, and the offeror would then be considered ineligible for award.

## Section 00 20 00 - Instructions for Procurement

### EVALUATION FACTORS FOR AWARD

#### 1.0 OVERVIEW

1.1 This is a "Best Value - Lowest Price Technically Acceptable" solicitation, for the Youth Center Annex at Joint Base McGuire-Dix-Lakehurst (JB-MDL). The Government will evaluate the proposals in accordance with the criteria described herein, and award a firm fixed-price contract to the responsible Offeror, whose proposal conforms with all the terms and conditions of the solicitation technical factors to be deemed technically acceptable, and whose proposal is determined to represent the overall lowest price to the Government.

#### 1.2 Target Not Used

#### 1.3 Who May Submit - Unrestricted Solicitation

#### 1.4 Professional Registration - Not Used.

### 2.1 GENERAL INSTRUCTIONS

#### 2.2 Proposal Requirements and Submission

Proposals should be submitted initially on the most favorable terms from a price and technical standpoint. Two (2) separate volumes shall be submitted as Volume I - Technical Proposal and Volume II - Price Proposal. Do not assume that Offerors will be contacted or afforded an opportunity to clarify, discuss or revise their proposals.

Do not submit any material not required by this solicitation (such as company or system brochures). It is assumed that the Offerors will meet all technical portions (construction criteria) of the Request for Proposal.

#### 2.3 Electronic Submission: Electronic Submission.

In addition to the hard copies required in this solicitation, all Offerors shall submit Volume 1 and TABs B, C and E of Volume II of their proposal on CD-ROM (one CD for each volume). Written portions of the proposal shall be in MS Word or Adobe Acrobat PDF format. The electronic version shall be either a single file tabbed in the same order as the hard copy or multiple files hyperlinked to a single table of contents. Any portion of the proposal not available in electronic format, i.e. cut sheets, if applicable, should be scanned in Adobe Acrobat PDF format, thus making it available electronically. The CD-ROM must be clearly labeled by solicitation number, project name, installation, and Offeror's name. The CD-ROM shall be marked with a label stating "Unclassified//Controlled Unclassified Info." In the event of any conflict between the electronic submission and the hard copy submission, the hard copy submission will govern and will be the material upon which the Government bases its evaluation and ultimately, its decision. Electronic media may be submitted in an un-editable format.

## 2.4 Page Limit and Size of Printed Materials

In order to effectively and equitably evaluate all proposals, the Contracting Officer must receive information sufficiently detailed to clearly address submission requirements as outlined below. The written portion of the proposal (Volume I - Technical Proposal), however, shall not exceed 75 pages. A page printed on two sides will be counted as two pages. Pages containing text shall be submitted on 8-1/2 x 11 inch paper. 'TAB' pages are encouraged to identify each section of the proposal and shall not count against proposal's total page count. Each page of text shall be minimally single spaced with a minimum 12-point font and at least one inch margins all around.

## 2.5 Where to Submit

Offerors shall submit their proposal packages to the Corps of Engineers (USACE) at the address shown in Block 7 of Standard Form 1442.

## 2.6 Submission Deadline

The USACE must receive proposals not later than the time and date specified in Block 13 of Standard Form 1442.

## 2.7 Incurring Costs

The Government is not liable for any costs incurred by the Offerors submitting an offer in response to this solicitation.

## 2.8 Format Requirements

Submit one (1) original plus five (5) copies. All proposals shall contain the volume number and the name, address and telephone number of the Prime or Joint Venture team, or other entity identified on the cover. The original proposal must be clearly marked as "ORIGINAL" and the original signatures must be in blue ink. Copies of the proposals must also be clearly marked as "COPY x of y" (e.g.; COPY 1 of 6). Proposal clarity and material organization in each volume are mandatory. No material shall be incorporated by reference. Each volume will be submitted separately bound. The proposal shall address and contain the information listed below.

The information will be used by the Source Selection Board to evaluate each proposal. Offerors are advised that conciseness and relevance of the proposal is important and unrelated information will not be evaluated. Proposals that provide only superficial coverage of the information required below, may not receive additional consideration and may be excluded from the competitive range. Additionally, should the proposal include any standard company terms and conditions that conflict with the terms and conditions of the solicitation, the proposal may be determined to be "unacceptable" and thus ineligible for award.

### 3.1 EVALUATION FACTORS

### 3.2 VOLUME 1-TECHNICAL PROPOSAL

Factor	Location	Description
FACTOR 1	Vol. 1 TAB A	Relevant Past Experience
FACTOR 2	Vol. 1 TAB B	Past Performance
FACTOR 3	Vol. 1 TAB C	Offeror's Team Qualifications

#### 3.2.1. FACTOR1-RELEVANT PAST EXPERIENCE -

The Offeror will demonstrate their past construction experience of projects similar in scope and complexity as this project; and the definitions and the criteria to be met, are described and listed below:

The Offeror (Prime Contractor) shall demonstrate their relevant past experience by submitting not less than three (3) but no more than five (5) examples of projects similar in scope and complexity. Those projects shall be physically completed within the last seven (7) years or are not less than 80% complete by this proposal due date. If the Offeror is a Joint-Venture (JV), either JV firm shall provide information demonstrating past experience relevant to their role on the projects submitted for consideration. A JV team must include and/or provide a signed Joint Venture Agreement in the RFP submission package. Offerors are invited, but not required, to submit photographs of successful projects in conjunction with this requirement. Accompanying photographs will not be included in the page count.

Similar scope is defined as the construction of new facility or the extensive renovation of an existing facility, at least 8,000 sq. feet in size or larger, of any industrial, commercial, administrative, or educational building. Similar scope may include a project where two or more facilities were under construction in that one project (or major renovation) but the total scope of that one project must have been 8,000 sq. ft. or larger.

Similar complexity is defined as construction projects that incorporate many of the features of the work below that would demonstrate the Offerors past skills in scheduling and managing a work force of multi-trade workers and sub-contractors to complete a project on time.

Complexity will be evaluated for the following features:

- (1) Standing seam metal roofing, flashing;
- (2) Multi-zone - HVAC systems, equipment & controls;
- (3) Electrical systems including phone, TV, & computer outlets;
- (4) LEED accreditations;
- (5) Interior construction;
- (6) Interior finishing;
- (7) Exterior construction to include windows and doors;
- (8) Masonry;
- (9) Sitework, landscaping, paving, curbs, sidewalks;
- (10) Thermal insulation;
- (11) Plumbing;
- (12) Site utilities such as storm drain, sanitary, fiber optic, gas;

- (13) Playground installations
- (14) Metal Framing & installations

Evaluation Criteria: For a project to be considered "acceptable" as a relevant past experience project it must have been the work scope of 8,000 sq. ft. or larger, plus it must meet or have seven (7) of the fourteen (14) features listed above.

AND

At least two (2) of the projects deemed "acceptable" in Factor 1, under relevant past experience, must have been past government contracts. The government contracts may or may not have been performed on a military installation, but, regardless past government work is an evaluating criteria to be met under this relevant past experience work. The past projects could be either new construction or major renovations (see criteria description above).

In summary, a minimum of three (3) and no more than five (5) total projects shall be submitted for consideration. If more than five (5) projects are submitted, only the first five (5) will be considered and evaluated.

To be deemed "acceptable" in Factor 1, the Offeror must have a total of three (3) projects deemed acceptable and two (2) of those three (3) projects would have to be past government projects.

If only one (1) or two (2) projects are deemed "acceptable" (under the complete definition above), that would not meet the definition of "acceptable" for Factor 1 for this solicitation.

Project information should be submitted on the form provided in ATTACHMENT #1, PRIME CONTRACTOR EXPERIENCE. **Note: on the project forms submitted please enter the contract start date as well as the original contract completion date and the actual completion date, if different, please explain why.**

**RATING GUIDELINES FOR FACTOR 1:**

The government will not award to an Offeror that receives an "unacceptable" rating for this Factor 1. Definitions are:

**Acceptable:** Proposal meets the requirements of the solicitation.

**Unacceptable:** Proposal does not meet the requirements of the solicitation.

**3.2.2. FACTOR 2 - CONTRACTOR PAST PERFORMANCE**

Offerors are required to provide a Past Performance questionnaire to their previous client(s) for their past client's input regarding their firm's and/or that of any past Joint Venture past performance. The Past Performance Questionnaire (PPQ) is included in this solicitation as Attachment #2.

**Offerors shall submit Past Performance Questionnaires for each project submitted under Factor 1.** Ensure correct phone numbers and email addresses are provided for the client point of contact. Completed Past Performance Questionnaires should be submitted with your proposal. If the Offeror is unable to obtain a completed PPQ from a client for a project(s) before the proposal closing date, the Offeror should complete and submit the first page of the PPQ with the proposal, this will provide contract and client information for the respective project(s). Offerors should follow-up with clients/references to ensure timely submittal of questionnaires.

Offerors shall not incorporate, by reference into their proposal PPQs, previously submitted for other RFPs. However, this does not preclude the Government from utilizing previously submitted PPQ information in the past performance evaluation. Also include performance recognition documents received within the last seven (7) years such as award fee determinations, customer letters of commendation, and any other forms of performance recognition.

In addition to the above the Government may review any other sources of information for evaluating past performance. Other sources may include, but are not limited to, past performance information retrieved through the Past Performance Information Retrieval System (PPIRS), including Contractor Performance Assessment Reporting System (CPARS), using all CAGE/DUNS numbers of team members (partnership, joint venture, teaming arrangement, or parent company/subsidiary/affiliate) identified in the Offeror's proposal, inquiries of owner representative(s), Federal Awardee Performance and Integrity Information System (FAPIIS), Electronic Subcontract Reporting System (eSRS), and any other known sources not provided by the Offeror.

While the Government may elect to consider data from other sources, the burden of providing detailed, current, accurate and complete past performance information rests with the Offeror.

In addition, the Offeror is required to provide information on past projects (within the past five (5) years) that were terminated (for any reason) or in which they have been issued a CURE NOTICE and provide accompanying information as to the details for such action(s) with an explanation of why they were terminated or issued a cure notice.

## RATING GUIDELINES FOR FACTOR 2:

The Government will not award to an Offeror that receives "unacceptable" rating in this factor:

**Acceptable:** Based on the Offeror's performance record, the Government has a reasonable expectation that the Offeror will successfully perform the required effort, or the Offeror's performance record is unknown.

**Unacceptable:** Based on the Offeror's performance record, the Government has no reasonable expectation that the Offeror will be able to successfully perform the required effort.

### **3.1.3 FACTOR 3 - OFFEROR'S TEAM QUALIFICATIONS:**

The Offeror shall provide the following to show qualifications of the team:

Provide a Resume for the following contractor personnel; the Project Manager and the Site Superintendent

Provide the individual resumes in the format found in Attachment # 3, Key Personnel Resume Form, information provided shall include the following:

- a. Name.
- b. Management Title on this project.
- c. Number of years with firm and other firms.
- d. Number of years in this management title or role.
- e. Specific experience and qualifications relevant to this project. Show dates so that the Government can determine if the minimum number of years required for the position is met. Indicate the scope and complexity of the experiences.

Expected roles and responsibilities of Key Personnel:

NOTE: Please carefully read all of the minimum requirements for each of the key personnel listed in this section before submitting your proposal. Ensure that all of the minimum criteria are clearly demonstrated in each applicable resume. Please refer back to Factor 1 for a definition of what is similar scope & complexity for this project.

#### Contractor's Project Manager:

The project manager shall be understood to mean the individual with the responsibilities that include but are not specifically limited to the following:

- (1) Performs all project management duties of the project.
- (2) Serves as the Governments' sole point of contact in all matters relating to work including, but not limited to, contract compliance, progress of work, overall project scheduling, financial matters, and change orders.
- (3) Attends all job meetings.
- (4) On-site a minimum of 80% of the time.

Submittal Requirements: The "Overall" Project Manager shall have a minimum of six years of project management experience in construction of which two (2) of those on projects submitted shall have been on projects of comparable scope & complexity as described under Factor 1. The Project Manager's experience must be clearly demonstrated in the resume submitted.



Site Superintendent:

- (1) Performs all superintendent duties required of the Contractor.
- (2) Serves as the Governments' on-site point of contact in all matters relating to the work including, but not limited to, scheduling of work, utility interruptions, and testing.
- (3) Attends all job meetings.
- (4) On-site at all time during all construction activities.
- (5) Serves under, and reports directly to, the Contractor's Project Manager.
- (6) Shall have no other duties except site superintendent

Submittal Requirements: The Site Superintendent shall have a minimum of six years construction experience on projects similar in scope and complexity as this project. Definitions of these words are as explained in Factor 1.

The project specifics/description and duties as site superintendent must be clearly demonstrated in the resume submitted.

### RATING GUIDELINES FOR FACTOR 3:

The government will not award to an Offeror that receives an unacceptable rating for this factor.

**Acceptable:** Proposal meets the requirements of the solicitation.

**Unacceptable:** Proposal does not meet the requirements of the solicitation.

### 3.2. VOLUME 2 - PRICE PROPOSAL AND PRO FORMA INFORMATION\*

Factor/Sub Factor	Location	Description
N/A	Vol. 2 TAB A	Price (Standard Form 1442 and Proposal Bid Schedules)
N/A	Vol. 2 TAB B	Bid Bond
N/A	Vol. 2 TAB C	Required Pre-Award Information
N/A	Vol. 2 TAB D	Price Breakdown Sheet
N/A	Vol. 2 TAB E	Representations and Certifications

\*NOTE - The Government will evaluate price independently from the technical evaluation. Price will not be rated, but will be evaluated for fairness and reasonableness through the use of a price analysis.

#### 3.2.1. GENERAL

The price proposal shall be submitted in a separate binder labeled "Volume II - Price Proposal". The sections shall parallel the submission requirements identified in the bid schedule. Provide one (1) original and five (5) copies of bound written material (folded and bound in Volume II). Submit TAB B, C and E of the Pro Forma information in a separate envelope labeled: "Volume II - Pro Forma Requirements (TAB B, C and E)." Provide CD ROM only for TABs B, C and E.

#### 3.2.2 TAB A - PRICE (STANDARD FORM 1442, PROPOSAL DATA SHEET AND CONTRACT LINE ITEM SCHEDULE)

#### 3.2.2.1. Submission Requirements:

3.2.2.2. Submit the properly filled out and executed SF 1442, along with the CLIN Schedule, containing proposed line item and total pricing, as well as the proposed contract duration.

3.2.2.3. Supplemental Price Breakdown. If deemed necessary to evaluate the price proposals, the Government's will request a cost breakdown of the Contract Line items in a sealed envelope marked "Cost Breakdown Information", in Excel format. The Government will provide details on where and how to send the breakdown. This information will not be needed sooner than three working days after the proposal submission due date. This information may be required for the initial proposal and, if requested, for any revised proposals. This information is not an opportunity for an Offeror to revise its non-price or price proposal.

3.2.2.4. Price will not be rated or scored, but will be evaluated for fairness and reasonableness through the use of a price analysis. The price evaluators will also check for appearance of unbalanced line item prices. Offerors are cautioned to distribute direct costs, such as material, labor, equipment, subcontracts, etc. and to evenly distribute indirect costs, such as job overhead, home office overhead, bond, 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 for the contract.

3.2.2.5. If deemed necessary, the supplemental price breakdown information will be used to assist the Government in performing the price evaluations described above.

#### 3.2.3 TAB B - BID BOND

##### 3.2.2.1. Submission Requirements:

3.2.3.2. Submit the Bid Bond in accordance with the Request for Proposal.

3.2.3.3. Evaluation requirements: This item is not rated. The Government will review the Bid Bond for legal sufficiency.

#### 3.2.4 TAB C - REQUIRED PRE-AWARD INFORMATION

3.2.4.1 Submission Requirements: Submit this information for the Contracting Officer's determination of Offeror responsibility, which includes, but is not limited to the following:

(1) A list of present commitments, including the dollar value thereof, and name of the organization under which the work is being performed. Include names and telephone numbers of personnel within each organization who are familiar with the prospective contractor's performance.

(2) A statement listing; (1) each contract awarded within the preceding three month period exceeding \$1,000,000.00 in value with a brief description of the contract; and (2) each contract awarded within the preceding three year period not already physically completed and exceeding \$5,000,000.00 in value with a brief description of the contract.

(3) If the prospective contractor is a joint venture, each joint venture member will be required to submit the above defined certification.

(4) If the Offeror is a joint venture, submit a signed/executed joint venture agreement.

3.2.4.2 One copy of the following information shall be provided:

(1) Proof of Financial Ability (Most recent financial statement covering assets and liabilities)

(2) Number of years the firm has been in business

(3) Name, address and telephone number of firm's bonding company

(4) Information showing Offeror's bond-ability for this project. Include the bond rate.

(5) Name, address and telephone numbers of two credit/trade references.

3.2.4.3 Evaluation Criteria: In addition to the other proposal information, the Contracting Officer shall use this information in making an affirmative responsibility determination for award to the Successful Offeror.

### 3.2.5 TABD-PRICEBREAKDOWNSHEET

#### 3.2.5.1. Submission Requirements:

3.2.5.2. Supplemental Price Breakdown. If deemed necessary to evaluate the price proposals, the Government's will request a price breakdown of the Contract Line items in a sealed envelope marked "Price Breakdown Information", in Excel format. The Government will provide details on where and how to send the breakdown. This information will not be needed sooner than three working days after the proposal submission due date. This information may be required for the initial proposal and, if requested, for any revised proposals. This information is not an opportunity for an Offeror to revise its non-price or price proposal.

#### 3.2.5.3. Evaluation Criteria:

3.2.5.4. Price will not be rated or scored, but will be evaluated for fairness and reasonableness through the use of a price analysis. The price evaluators will also check for appearance of unbalanced line item prices. Offerors are cautioned to distribute direct costs, such as material, labor, equipment, subcontracts, etc. and to evenly distribute indirect costs, such as job overhead, home office overhead, bond, 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 for the contract.

3.2.5.5 If deemed necessary, the supplemental price breakdown information will be used to assist the Government in performing the price evaluations described above.

### 3.2.6 TAB E - REPRESENTATIONS & CERTIFICATIONS

3.2.6.1 SUBMISSION REQUIREMENTS: Confirm that the Offeror's representations and certifications have been completed and also include hard copies under this Tab or proof that the Offeror is registered in the System for Award Management (SAM).

3.2.6.2 EVALUATION CRITERIA: The representations and certifications submitted under this tab and online will be reviewed to ensure the Offeror's representations are consistent, accurate, and in accordance with regulation. It will not be rated.

## 4.0 EVALUATION PROCEDURES

### 4.1. SOURCE SELECTION EVALUATION BOARD (SSEB)

4.1.1. The SSEB will be established to conduct the evaluation of proposals received in response to this solicitation. The evaluation will be based on the content of the proposal and any subsequent discussions required,

as well as information obtained from other sources, e.g. past performance information. The SSEB will not consider any information incorporated by reference.

## 4.2. EVALUATION

4.2.1. The SSEB will first individually evaluate each proposal and then the board will convene to evaluate the proposals and assign a consensus rating for each evaluation factor.

4.2.2 Clarification may be requested without discussions, relevant to past performance or minor clerical errors.

4.2.3 Communications may be held with those Offerors whose exclusion from the competitive range is uncertain, to address ambiguities and past performance for enhancing the government understanding to allow a reasonable interpretation of the proposal for placement in the competitive range.

4.2.4. A "Competitive Range" is a subjective determination of the most highly rated proposals in the event that discussions with Offerors are required or considered to be in the Government's best interests. In such an event, the Contracting Officer will establish a competitive range of all the most highly rated proposals.

4.2.5. If discussions are held, the Government may engage in meaningful discussions with each technically acceptable Offeror. The contracting officer will tailor the discussions to each Offerors' proposal relative to the solicitation requirements and evaluation factors. To be meaningful, at a minimum, discussions must include identification of all evaluated deficiencies, significant weaknesses, weaknesses, and any adverse past performance information to which the Offeror has not yet had an opportunity to respond. The contracting officer also is encouraged to discuss other aspects of the Offerors' proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. However, the contracting officer will not discuss with individual Offerors how their proposal compares to other Offerors proposals (technical leveling and/or technical transfusion is not allowed). The Government will provide the Offeror an advance agenda for the discussions. During discussions, the Government may ask the Offeror to further explain its proposal and to answer questions about it.

4.2.6. Upon conclusion of discussions, Offerors will be afforded an opportunity to submit their proposal revisions for final evaluation and selection.

4.2.7 Offerors are advised that employees of the firms identified below may serve as non- government advisors in the source selection process. These individuals will be authorized access only to those portions of the proposal data and discussions that are necessary to enable them to perform their respective duties. Such firms are expressly prohibited from competing on the subject acquisition.

FIRM NAME

ADDRESS

TELEPHONE NUMBER

NONE

#### 4.3. DEFINITIONS

##### 4.3.1. Deficiency

A material failure of a proposal to meet a Government requirement, where correction of this error is not possible without major revisions to the proposal, or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level or when a failure to meet the RFP requirements is a life/safety issue.

#### 4.3.2. Weakness

A flaw in the proposal that increases the risk of unsuccessful contract performance but is easily correctable. Successful contract performance is defined by customer satisfaction.

#### 4.3.3. Significant Weakness

As flaw in the proposal that appreciably increases the risk of unsuccessful contract performance. Successful contract performance is defined by customer satisfaction.

#### 4.3.4 Uncertainty

Any aspect of the proposal for which the intent of the Offeror is unclear because there may be more than one way to interpret the offer or because inconsistencies in the offer indicate that there may be an error, omission, or mistake.

#### 4.3.6. Deviation

Proposal implies or specifically offers a deviation below the specified criteria. The Offeror may or may not have called the deviation to the Government's attention. A deviation is a deficiency. The proposal must conform to the solicitation requirements for award.

### 4.4. EVALUATION RATING SYSTEM -

4.4.1. General: The Government will review the proposals and rate the quality of each evaluation factor. The SSEB will rate each proposal against the specified evaluation criteria in the Solicitation requirements. They will not compare proposals.

4.4.2. Review Write-up: The Government will support each rating with a narrative, separately listing all strengths or advantages, weaknesses or disadvantages, deficiencies, and required clarifications.

## 5.0 BASIS OF AWARD

5.1. The Government will award a firm fixed price contract to the responsible Offeror whose technically acceptable proposal represents the lowest price.

5.2. The basis of award will be the Government's assessment as to which proposal is determined to be technically acceptable and is the lowest price determined fair and reasonable through the use price analysis. Offerors that do not receive an acceptable rating (technically acceptable), will not be selected, regardless of their price (lowest Offeror may not be selected).

5.3. Offerors have been reminded to include their best technical and price terms in their initial offer and not to automatically assume that they will have an opportunity to participate in discussions or be asked to submit a revised offer. The Government may make award of an acceptable proposal without discussions, if deemed to be in the best interests of the Government.

**ATTACHMENT #1**

**(Submitting for Project: Youth Center Annex at JB-MDL, N.J.)**

**PRIME CONTRACTOR EXPERIENCE**

Offeror's Name: \_\_\_\_\_

Past Project Name: \_\_\_\_\_

Project Location: \_\_\_\_\_

Project Size (i.e.; square foot area): \_\_\_\_\_

Project Description (scope and complexity): \_\_\_\_\_

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

Facility Type (i.e.; office, educational, etc.): \_\_\_\_\_

Role (i.e. prime, joint venture, sub-contractor) and work (Company's) self-performed % on this project:

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

Project Award Amount: \_\_\_\_\_ Project Completion Amount: \_\_\_\_\_

Project Original Contract Duration and Completion Date: \_\_\_\_\_

Project Final Contract Duration and Completion Date: \_\_\_\_\_

Past Client Name: (if Government, give Contract No. & name of Contracting Officer):

\_\_\_\_\_

Client/Agency Point of Contact, Phone Number & Address (if Government, give Contract No. & Name of Contracting Officer):

\_\_\_\_\_

Construction Contractor and Subcontractor(s): \_\_\_\_\_

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

## ATTACHMENT #2

### (Submitting for Project: Youth Center Annex at JB-MDL, NJ) PAST PERFORMANCE CUSTOMER QUESTIONNAIRE

The Offeror/Contractor listed is being considered in a Source Selection by the US Army Corps of Engineers, New York District. This is a request for past performance information on a project the Offeror has identified as being relevant to this solicitation. This information will be used in the evaluation of the Offeror's performance of that project. The following information, once submitted, will be treated as confidential and will not be released. This information will only be used to evaluate this Offeror for this solicitation.

Note: on the project forms submitted please enter the contract start date as well as the original contract completion date and the actual completion date, if different, please explain why.

NAVFAC/USACE PAST PERFORMANCE QUESTIONNAIRE (Form PPQ-0)	
<b>CONTRACT INFORMATION (Contractor to complete Blocks 1-4)</b>	
<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 How is this project relevant to project of submission? (Please provide details such as similar equipment, requirements, conditions, etc.) _____	



<b>CLIENT INFORMATION (Client to complete Blocks 5-8)</b>
<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>
<b>8. Client's Signature:</b>

NOTE: NAVFAC/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 DISCOURAGED FROM SUBMITTING QUESTIONNAIRES DIRECTLY TO THE GOVERNMENT. THE OFFEROR SHALL INSTRUCT HIS CLIENT THAT THE COMPLETED QUESTIONNAIRE MUST BE RETURNED TO THE OFFEROR FOR INCLUSION IN THE OFFEROR'S PROPOSAL PACKAGE TO USACE. THE GOVERNMENT RESERVES THE RIGHT TO VERIFY ANY AND ALL INFORMATION ON THIS FORM.**

<i>ADJECTIVE RATINGS AND DEFINITIONS TO BE USED TO BEST REFLECT YOUR EVALUATION OF THE CONTRACTOR'S PERFORMANCE</i>
---

RATING	DEFINITION	NOTE
(A) Acceptable	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 acceptable.	An Acceptable 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 Acceptable solely for not performing beyond the requirements of the contract.
(U) Unacceptable	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 Unacceptable 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 unacceptable rating.

**TO BE COMPLETED BY 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, weaknesses, deficiencies, or other comments which may assist our office in evaluating performance risk (*please attach additional pages if necessary*):**

**ATTACHMENT #3**

**KEY PERSONNEL RESUME FORM**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Number of Years: With this firm \_\_\_\_\_ With other firms \_\_\_\_\_

Number of Years in this position or role: \_\_\_\_\_

Specialization: \_\_\_\_\_

\_\_\_\_\_

Professional Registration (Type and State of Registration): \_\_\_\_\_

\_\_\_\_\_

Experience and Qualifications Relevant to this Project (provide dates and how it is comparable to the solicitation):

\_\_\_\_\_

**CLAUSES**

**INSPECTION OF CONSTRUCTION (NOV 2004) (BE-003)**

- (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 this contract conforms to contract requirements. The contractor shall maintain complete inspection records and make them available to the NAFI. All work shall be conducted under the general direction of the Contracting Officer and is subject to NAFI inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) NAFI inspections and tests are for the sole benefit of the NAFI 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 NAFI after acceptance of the completed work under paragraph (i) below.
- (d) The presence or absence of a NAFI or 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, without additional charge, all facilities, labor, and material reasonable needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The NAFI 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 NAFI 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 NAFI not to conform to contract requirements, unless in the public interest the NAFI 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 NAFI 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 NAFI decides to examine already completed work by moving 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 NAFI 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 NAFI's rights under any warranty or guarantee.
- (End of clause)*

**Section F (Deliveries and performance)**

**BF.003 LIQUIDATED DAMAGES-CONSTRUCTION (NOV 2004)**

- (a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the NAFI in the amount of \$1,275.00 for each calendar day of delay until the work is completed or accepted. The Second Tier demurrage shall be assessed at the rate calculated below in the event the contractor fails to complete documented punchlist items after the date of beneficial occupancy = \$319.00 for each calendar day of delay

(b) If the NAFI 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)

**BF.007 SUSPENSION OF WORK (NOV 2004) [**

(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 NAFI.

(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 such 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 the final payment under the contract.

(End of clause)

Section 00 72 00 - General Conditions

CLAUSES

**BL.001 DEFINITIONS (NOV 2004)**

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

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

(c) "Commercial Item" means a product or a service (e.g., items, supplies, materials, components) sold or traded to the general public in the course of conducting normal business operations at established catalog or market prices.

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

(End of clause)

**BL.002 NONAPPROPRIATED FUND INSTRUMENTALITY (NOV 2004)**

The Nonappropriated Fund Instrumentality (NAFI), which is party to this contract, is a nonappropriated fund instrumentality of the Department of the Army. NO APPROPRIATED FUNDS OF THE UNITED STATES SHALL BECOME DUE OR BE PAID THE CONTRACTOR BY REASON OF THIS CONTRACT. This contract is NOT subject to The Contract Disputes Act of 1978.

(End of clause)

**BL.004 PROTECTING THE NAFI'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT**

(DEC 2010)

(a) The Government suspends or debars Contractors to protect the Government's/NAFI's interests. The Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

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

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

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

(End of clause)

**BL.006 COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK (NOV 2004)**

The Contractor will be required to (a) commence work under this contract within five calendar days after the date of receipt by him of notice to proceed, (b) to prosecute work diligently, and (c) to complete the entire work, ready for use not later than the time specified in the terms of the contract. The time stated for completion shall include final clean up of the premises.

(End of clause)

**BL.007 TIME EXTENSIONS (NOV 2005)**

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 the contract. 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)

**BL.010 INVOICES (APR 2011)**

(a) An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include as applicable the following:

- (1) Name and address of the contractor.
- (2) Invoice date.
- (3) Contract number or other authorization for supplies delivered, services performed (including order number and contract line item number).
- (4) Description, quantity, unit of measure, unit price and extended price of supplies delivered or services performed.
- (5) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government/NAFI bills of lading.
- (6) Name and address of contractor official to whom payment is to be sent (must be the same as that on the contract or on a proper notice of assignment).
- (7) Name (where applicable), title, phone number, mailing address of person to be notified in event of defective invoice.
- (8) Any other information or documentation required by the contract (such as evidence of shipment). Invoices shall be prepared and submitted in duplicate (one copy shall be marked "original") unless otherwise specified.

(b) For purposes of determining if interest begins to accrue under the Prompt Payment Act (Public Law 97-177, as amended).

- (1) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;
- (2) Payment shall be considered made on the date on which check for such payment is dated;



(3) Payment terms (e.g., "net 20") offered by the contractor will not be deemed a "required payment date"; and

(4) The following periods of time will not be included:

(i) after receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed 7 days (3 days on contracts for meat food products, and 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils and food products prepared from edible fats or oils); and

(ii) between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

(5) If the NAFI makes payment by Electronic Funds Transfer (EFT) (see applicable contract clause). In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purposes of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(End of clause)

#### **BL.011 EXAMINATION OF RECORDS (NOV 2005)**

(a) The Contractor agrees that the Contracting Officer or the Contracting Officer's duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment under the contract.

(b) The Contractor agrees to include the clause in (a) above, in all subcontracts.

(End of clause)

#### **BL.012 INSURANCE-WORK ON A GOVERNMENT INSTALLATION AND/OR OTHER NAFI LOCATIONS (NOV 2005)**

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract, in no event shall the amount be lesser than the minimum requirements established by applicable state and local regulations and laws.

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

(c) The Contractor shall insert the substance of the clause, including this paragraph (c), in subcontracts under the contract that requires a work on a Government installation and/or other NAFI location and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. At least five days before entry of each such subcontractor's personnel on the Government installation, the Contractor shall furnish (or ensure that there has been furnished) to the Contracting Officer a current certificate of insurance meeting the requirements of paragraph (b) above, for each subcontractor.

(End of clause)

## **BL.025 CONSTRUCTION WAGE RATE REQUIREMENTS (MAY 2014)**

(a) Definition..“Site of the work”.

(1) Means.

(i) The primary site of the work. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is.

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided.

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a

weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division

Employment Standards Administration

U.S. Depart

ment of

Labor

Washington,

DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

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

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

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

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

(End of clause)

#### **BI.026 WITHHOLDING OF FUNDS (MAY 2014)**

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

#### **BI.027 PAYROLLS AND BASIC RECORDS (MAY 2014)**

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) (Construction Wage Rate Requirement statute)), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Construction Wage Rate Requirements, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out

accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except that full social security numbers and home addresses shall not be included on

weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional [Form WH-347](http://www.dol.gov/whd/forms/wh347.pdf) is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347.pdf>. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify.

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional [Form WH-347](http://www.dol.gov/whd/forms/wh347.pdf) shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

## **BL.028 APPRENTICES AND TRAINEES (DEC 2010)**

**"Apprentice" means a person-**

**(1) Employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS; or**

**(2) Who is in the first 90 days of probationary employment as an apprentice in an apprenticeship program, and is not individually registered in the program, but who has been certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.**

**"Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), as meeting its standards for on-the-job training programs and which has been so certified by that Administration.]**

**(a) Apprentices.**

(1) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when employed-

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS;, or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be

permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees.

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of clause)

**BL.029 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (NOV 2004)**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(End of clause)

**BL.030 SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)**

(a) Definition. "Construction, alteration or repair," as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

- (1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
- (2) Painting and decorating;
- (3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
- (4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the “site of the work” as defined in the clause BI.025, Construction Wage Rate Requirements of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the “site of the work” definition; and
- (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the BI.025, Construction Wage Rate Requirements, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the clause at BI.025, in the “site of the work” definition).

(b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

- (1) Construction Wage Rate Requirements;
- (2) Contract Work Hours and Safety Standards-Overtime Compensation (if the clause is included in this contract);
- (3) Apprentices and Trainees;
- (4) Payrolls and Basic Records;
- (5) Compliance with Copeland Act Requirements;
- (6) Withholding of Funds;
- (7) Subcontracts (Labor Standards);
- (8) Contract Termination—Debarment;
- (9) Disputes Concerning Labor Standards;
- (10) Compliance with Construction Wage Rate Requirements and Related Regulations; and
- (11) Certification of Eligibility.

(c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed [Standard Form \(SF\) 1413](#), Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor’s signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed [SF 1413](#) for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

(End of clause)

#### **BI.031 CONTRACT TERMINATION-DEBARMENT (MAY 2014)**



A breach of the contract clauses entitled Construction Wage Rate Requirements, Contract Work Hours and Safety Standards-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Construction Wage Rate Requirements and Related Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

(End of clause)

#### **BL.032 COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS (MAY 2014)**

All rulings and interpretations of the Construction Wage Rate Requirements and related statutes contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

(End of clause)

#### **BL.033 DISPUTES CONCERNING LABOR STANDARDS (NOV 2004)**

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

(End of clause)

#### **BL.034 CERTIFICATION OF ELIGIBILITY (NOV 2004)**

- (a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government or NAFI contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government or NAFI contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C.1001.

(End of clause)

#### **BL.035 LABOR STANDARDS FOR CONSTRUCTION WORK-FACILITIES CONTRACTS (DEC 2017)**

- (a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses in performance of such work: (1) Contract Work Hours and Safety Standards Act-Overtime Compensation; (2) Construction wage rate requirements; (3) Withholding of Funds; (4) Payrolls and Basic Records; (5) Apprentices and Trainees; (6) Compliance with Copeland Act Requirements; (7) Subcontracts (Labor Standards); (8) Contract

Termination-Debarment; (9) Compliance with construction wage rate requirements and related regulations; (10) Disputes Concerning Labor Standards; and (11) Certification of Eligibility.

(b) Upon determination by the Contracting Officer that the Construction wage rate requirement is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates shall be incorporated into the contract by modification.

(c) No construction, alteration, or repair (including painting and decorating) of public buildings or public works shall be performed under this contract without incorporation of the wage determination unless the Contracting Officer authorizes the start of work because of unusual or emergency situations, in which case the wage determination shall be incorporated as soon as possible and made retroactive to the start of the work.

(End of clause)

#### **BL.037 PROHIBITION OF SEGREGATED FACILITIES (NOV 2004)**

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

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

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

(End of clause)

#### **BL.038 EQUAL OPPORTUNITY (DEC 2010)**

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

(b)(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, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

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

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

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

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers'

representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

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

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

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

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

(End of clause)

#### **BL.039 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (NOV 2004)**

(a) Definitions. As used in this clause-

"Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means-

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate

participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other

Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainee at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

- (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

- (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

- (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

- (4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other

information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.

(6) Disseminate the Contractor's equal employment policy by-

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all onsite supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Contractor-

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to-

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government/NAFI; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)

#### **BL.040 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (NOV 2004)**

(a) General.

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

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

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

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



- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor, including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

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

(b) Postings.

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

- (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
- (ii) The rights of applicants and employees.

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

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

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

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

(End of clause)

## **BL.045 EQUAL OPPORTUNITY FOR VETERANS (DEC 2010)**

(a) Definitions. As used in this clause-

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

"Armed Forces service medal veteran" means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

"Disabled veteran" means-

- (1) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or
- (2) A person who was discharged or released from active duty because of a service- connected disability.

"Executive and senior management" means-

- (1) Any employee-
  - (i) Compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;
  - (ii) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
  - (iii) Who customarily and regularly directs the work of two or more other employees; and
  - (iv) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or
- (2) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

"Other protected veteran" means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

"Positions that will be filled from within the Contractor's organization" means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception

does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Qualified disabled veteran" means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

"Recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval or air service.

(b) General.

(1) The Contractor shall not discriminate against any employee or applicant for employment because the individual is a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their status as a disabled veteran, recently separated veteran, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:

- (i) Recruitment, advertising, and job application procedures.
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
- (iii) Rate of pay or any other form of compensation and changes in compensation.
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
- (v) Leaves of absence, sick leave, or any other leave.
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor.
- (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.
- (viii) Activities sponsored by the Contractor including social or recreational programs.
- (ix) Any other term, condition, or privilege of employment.

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

(3) The Department of Labor's regulations require contractors with 50 or more employees and a contract of \$100,000 or more to have an affirmative action program for veterans. See 41 CFR Part 60-300, Subpart C.

(c) Listing openings.

(1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate employment service delivery system where the opening occurs. Listing employment openings with the State workforce agency job bank or with the local employment service delivery system where the opening occurs shall satisfy the requirement to list jobs with the appropriate employment service delivery system.

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

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

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

(e) Postings.

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

(2) The employment notices shall-

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are disabled veterans, recently separated veterans, Armed Forces service medal veterans, and other protected veterans; and

(ii) Be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, and provided by or through the Contracting Officer.

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

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action

to employ, and advance in employment, qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, the Government or the NAFI may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor. This includes implementing any sanctions imposed on a contractor by the Department of Labor for violations of this clause. These sanctions (see 41 CFR 60-300.66) may include-

- (1) Withholding progress payments;
- (2) Termination or suspension of the contract; or
- (3) Debarment of the contractor.

(g) Subcontracts. The Contractor shall include the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance.

(End of clause)

#### **BI.045 EQUAL OPPORTUNITY FOR VETERANS (DEC 2010) -- Alternate I**

Notice: The following term(s) of this clause are waived for this contract: *[List term(s)]*.

(a) Definitions. As used in this clause-

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

"Armed Forces service medal veteran" means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

"Disabled veteran" means-

- (1) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or
- (2) A person who was discharged or released from active duty because of a service- connected disability.

"Executive and senior management" means-

- (1) Any employee-
  - (i) Compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;

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

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

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

(2) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

"Other protected veteran" means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

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

"Qualified disabled veteran" means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

"Recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval or air service.

(b) General.

(1) The Contractor shall not discriminate against any employee or applicant for employment because the individual is a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their status as a disabled veteran, recently separated veteran, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:

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

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

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

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

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

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

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

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

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

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

(3) The Department of Labor's regulations require contractors with 50 or more employees and a contract of \$100,000 or more to have an affirmative action program for veterans. See 41 CFR Part 60-300, Subpart C.

(c) Listing openings.

(1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate employment service delivery system where the opening occurs. Listing employment openings with the State workforce agency job bank or with the local employment service delivery system where the opening occurs shall satisfy the requirement to list jobs with the appropriate employment service delivery system.

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

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

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

(e) Postings.

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

(2) The employment notices shall --

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are disabled veterans, recently separated veterans, Armed Forces service medal veterans, and other protected veterans; and

(ii) Be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, and provided by or through the Contracting Officer.

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

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

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, the Government or the NAFI may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor. This includes implementing any sanctions imposed on a contractor by the Department of Labor for violations of this clause. These sanctions (see 41 CFR 60-300.66) may include-

- (1) Withholding progress payments;
- (2) Termination or suspension of the contract; or
- (3) Debarment of the contractor.

(g) Subcontracts. The Contractor shall include the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance.

(End of clause)

#### **BL.055 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (DEC 2010)**

(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 <http://www.treas.gov/offices/enforcement/ofac/sdn/>. 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 <http://www.treas.gov/offices/enforcement/ofac>.

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

(End of clause)

#### **BL.063 IRREVOCABLE LETTER OF CREDIT (DEC 2005)**

(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 NAFI (the beneficiary) of a written demand therefore. 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 the Miller Act, 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) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. 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.

(e) The issuing financial institution shall use the following format 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: [NAFI organization]  
[NAFI'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 NAFI (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, 1993 Revision, International Chamber of Commerce Publication No. 500, 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: 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 us, 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, 1993 Revision, International Chamber of Commerce Publication No. 500, 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)

#### **BI.064 PERFORMANCE AND PAYMENT BONDS-CONSTRUCTION (DEC 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.

- (1) Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds within 10 days after award of contract and before receiving a Notice to Proceed with the work or being allowed to start work.
- (2) The Bonds shall include a statement that states that **"The term United States of America, as set forth in this bond form shall mean the United States Nonappropriated Fund Instrumentality (herein after referred to as [ ]), which is a party to this contract."**
- (3) The penal amount of the bond should not exceed the surety's underwriting limit; the bond will be acceptable only if
  - (i) the amount which exceeds the specified limit is coinsured or reinsured and
  - (ii) the amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer.
- (4) The penal sums of such bonds shall be as follows:

- (i) Performance Bonds (Standard Form 25). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.
- (ii) Payment Bonds (Standard Form 25A). The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.
- (iii) Additional bond protection.
  - (A) The NAFI may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.
  - (B) The NAFI 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. If the contractor, upon acceptance of its bid or proposal by the fund within the period specified for acceptance, fails to execute all contractual documents or give performance and payment bonds as required by the contract within the time specified, the Contracting Officer may terminate the contract for default.

(d) Surety or other security for bonds. The bonds shall be in the form of a firm commitment, supported by corporate sureties whose names appear on the list contained in the Department of the Treasury Circular 570, 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. Individual sureties will not be acceptable under the requirements of this contract. 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. 270b(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

#### **BL.067 TAXES (NOV 2004)**

(a) Except as may be otherwise provided in this contract, the contract price includes all taxes, duties, or other public charges in effect and applicable to this contract on the contract date, except

any tax, duty or other public charge which by law, regulation or governmental agreement is not applicable to expenditures made by the NAFI or on its behalf: or any tax, duty, or other public charge from which the Contractor, or any subcontractor hereunder, is exempt by law, regulation or otherwise. If any such tax, duty, or other public charge has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

(b) If for any reason, after the contract date of execution, the Contractor or subcontractor is relieved in whole or in part from the payment or the burden of any tax, duty or other public charge included in the contract price, the contract price shall be correspondingly reduced; or if the Contractor or a subcontractor is required to pay in whole or in part any tax, duty, or other public charge which was not included in the contract price and which was not applicable at the contract date of execution the contract price shall be correspondingly increased.

(c) No adjustment of less than \$250 shall be made in the contract price pursuant to this clause.

(d) With respect to foreign taxes, NAFI's located in foreign countries will not pay to nor collect for any foreign country or political subdivision any tax unless the United States has consented to levy collection by treaty, convention, or executive agreement.

(End of clause)

#### **BL.069 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (NOV 2004)**

(a) The NAFI shall pay the contract price as provided in this contract.

(b) The NAFI may 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. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer may authorize material delivered on the site may also be taken into consideration if -

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

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

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

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

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

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

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

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

(Name)

(Title)

(Date)

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

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

(2) Be obligated to pay the NAFI 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) 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 NAFI 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) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the NAFI, 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 NAFI to require the fulfillment of all of the terms of the contract.

(g) In making these progress payments, the NAFI 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 (c) above shall not apply to that portion of progress payments attributable to bond premiums.

(h) The NAFI 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 NAFI 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 clause of this contract.

(i) Notwithstanding any other provision of this contract, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in AR 215-4, including contract modifications for additional supplies, services or construction, 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.

(End of clause)

#### **BL.070 DISCOUNTS FOR PROMPT PAYMENT (NOV 2004)**

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and NAFI financial management activities are not expected to be conducted, payment may be made on the following business day.

(End of clause)

#### **BL.074 PROMPT PAYMENT (APR 2011)**

Notwithstanding any other payment clause in this contract, the NAFI will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an



electronic funds transfer. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments-

(1) Due date.

(i) Except as indicated in subparagraph (a)(2) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor (except as provided in subdivision (a)(1)(ii) of this clause).

(B) The 30th day after Government/NAFI acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

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

(2) Certain food products and other payments.

(i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are-

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub.L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a

proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause.

(i) Name and address of the Contractor.

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

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

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

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

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

(viii) Any other information or documentation required by the contract (such as evidence of shipment).

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

(4) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(4)(i) through (a)(4)(iii) of this clause are

met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government/NAFI business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

- (i) The designated billing office received a proper invoice.
- (ii) A receiving report or other Government/NAFI documentation authorizing payment was processed, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.
- (iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the NAFI and the Contractor.

(5) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611, however other provisions of the Act are not applicable to NAFIs see Disputes Clause) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the NAFI until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

- (i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government/NAFI acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government/NAFI officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

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

- (A) The period taken to notify the Contractor of defects in invoices submitted to the NAFI, but this may not exceed 7 days (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

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

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

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

(iv) Interest penalties are not required on payment delays due to disagreement between the NAFI and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause entitled Disputes.

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

(7) Additional interest penalty.

(i) A penalty amount, calculated in accordance with subdivision (a)(7)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor-

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

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

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(7)(ii) of this clause, postmarked no later than 40 days after the invoice amount is paid.

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall-

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

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

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

(B) Demands must be postmarked on or before the 40th day after payment was made, except that-

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

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

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty except

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

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

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

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(7)(iii)(A) of this clause.

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

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

(b) Contract financing payments-

(1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the *[insert day as prescribed by Agency head; if not prescribed, insert 30th day]* day after receipt of a proper contract-financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests,

payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

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

(c) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government/NAFI 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 contract 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)

**BL.076 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS  
(NOV 2004)**

Notwithstanding any other payment terms in this contract, the NAFI will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments-

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

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

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

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

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

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after NAFI acceptance of the work or services completed by the Contractor, whichever is later. If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date shall be the 30th day after

the date of the Contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

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

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

(i) Name and address of the Contractor.

(ii) Invoice date and identification number. (The Contractor is encouraged to date invoices as close as possible to the date of mailing or transmission and to assign an identification number to each invoice.)

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

(iv) Description of work or services performed.

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

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

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

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

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

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

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

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

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

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

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



requirements also do not compel Government/NAFI officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

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

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

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

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

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

(iv) Interest penalties are not required on payment delays due to disagreement between the NAFI and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause entitled, Disputes.

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

(6) Additional interest penalty.

(i) A penalty amount, calculated in accordance with subdivision (a)(6)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor-

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

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

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

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall-

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

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

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

(B) Demands must be postmarked on or before the 40th day after payment was made, except that -

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

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

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty except-

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

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

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

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

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty

shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

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

(b) Contract financing payments-

(1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the [insert day as prescribed by Agency head; if not prescribed, insert 30th day] day after receipt of a proper contract-financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

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

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

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

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

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

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

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of

the Contract Disputes Act of 1978 (41 U.S.C. 611) (otherwise CDA does not apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

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

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

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to

pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

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

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

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

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

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the NAFI but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall-

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

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

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

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

(i) Make such payment within-

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

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

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611)(otherwise the CDA of 1978 does not apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

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

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

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

(A) The amounts withheld under subparagraph (e)(1) of this clause; and

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

(6) Interest to NAFI. Be obligated to pay to the NAFI 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 NAFI until-

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

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

(f) Third-party deficiency reports –

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

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

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

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

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

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611)(otherwise CDA of 1978 does not apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

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

- (1) The amount to be withheld;
- (2) The specific causes for the withholding under the terms of the subcontract; and
- (3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the NAFI 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 NAFI is a party. The NAFI 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 NAFI for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(End of clause)

#### **BI.077 MANDATORY INFORMATION FOR ELECTRONIC FUNDS TRANSFER (NOV 2004)**

(a) Method of payment. All payments by the NAFI under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (b) of this clause.

(b) Exceptions to the EFT are as follows:

- (1) Contracts awarded to companies located in OCONUS
- (2) Contracts denominated or paid in other than US currency
- (3) Classified contracts when such payments would compromise national security
- (4) Contracts executed by deployed Contracting Officers in the course of military operations

(5) Contracts executed by any Contracting Officer in the course of emergency operations, e.g., responses to natural disaster or national or civil emergencies

(c) Waiver. The servicing accounting office may waive payment by EFT under the following situations:

(1) Sole Proprietorship Contractors. Sole Proprietorship Contractors may elect, in writing, to be designated as individuals and paid by check. Waiver will be granted to all such Contractors.

(2) Infrequently used Contractors. The servicing accounting office will make a determination, at its own discretion, whether or not to use EFT to pay infrequently used Contractors. Generally, this will apply only to those Contractors paid no more than once a year.

(3) Advance checks for Entertainers. Entertainers may be paid by check when the servicing accounting office determines this to be the most appropriate method of payment.

(d) Mandatory submission of Contractor's EFT information.

(1) The Contractor is required to provide the payment office with the following information required to make payment by EFT.

(i) Name and address of the Contractor

(ii) Nine-digit Routing Transit Number of the Contractor's financial agent

(iii) Contractor's account number, title of account, and the type of account (checking or savings)

(2) Any changes to the Contractor's original information, to include the closure of account, must be provided to the payment office at least 30 days prior to the effective date of payment.

(e) Mechanisms for EFT payment. The NAFI may make payment by EFT through the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association.

(f) Suspension of payment.

(1) The NAFI is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(2) If the EFT information changes, the NAFI shall begin using the new information no later than 30 days after receipt by the designated office. However, the Contractor may request that no further payments be made until the payment office implements the updated EFT information. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(g) Liability for uncompleted or erroneous transfers.

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

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, and-

- (i) If the funds are no longer under the control of the payment office, the NAFI is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, the NAFI shall not make payment and the provisions of paragraph (f) shall apply.

(h) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if the date specified for settlement of the payment is on or before the prompt payment due date.

(i) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (d) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor.

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

(End of clause)

#### **BL.079 DISPUTES (NOV 2004)**

(a) This contract is subject to the rules and regulations promulgated by the Secretary of Defense and Secretary of the Army for NAF contracting.

(b) The contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 60I-613).

(c) All disputes arising under or relating to this contract shall be resolved under this clause.

(d) "Claims," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract forms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause. The submission may be converted to a claim under this clause, by complying with the submission requirements of this clause. if it is disputed either as to liability or amount or is not acted upon in a reasonable time.



(e) (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the NAFI against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$100,000, the Contractor shall submit with the claim a certification that-

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the contractor believes the NAFI is liable.

(3) (i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by-

(A) A senior company official in charge at the Contractor's plant or location involved, or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

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

(g) The Contracting Officer's decision shall be final unless the contractor appeals as provided in paragraph (h) of this clause.

(h) The Contracting Officer's decision on claims may be appealed by submitting a written appeal to the Armed Services Board of Contract Appeals within 90 days of receipt of the Contracting Officer's final decision. Decisions of the Armed Services Board of Contract Appeals are final and are not subject to further appeal.

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

(End of clause)

#### **BL.081 DIFFERING SITE CONDITIONS (NOV 2004)**

(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 this 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, performance of 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)

#### **BI.082 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (NOV 2005)**

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of 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 NAFI, as well as from 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 NAFI.

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

(End of clause)

#### **BI.083 MATERIAL AND WORKMANSHIP (NOV 2004)**

(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, articles, or processes 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 that the Contractor contemplates incorporating in 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.

(End of clause)

#### **BL.084 SUPERINTENDENCE BY THE CONTRACTOR (NOV 2004)**

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

(End of clause)

#### **BL.085 PERMITS AND RESPONSIBILITIES (NOV 2004)**

The Contractor shall, without additional expense to the NAFI, 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, and shall take proper safety and health precautions to protect the work, the workers, the public, and property of others. 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)

#### **BL.086 OTHER CONTRACTS (NOV 2004)**

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

(End of clause)

**BL.087 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (NOV 2004)**

- (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)

**BL.088 OPERATIONS AND STORAGE AREAS (NOV 2004)**

- (a) The Contractor shall confine all operations (including storage of materials) on NAFI or Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government and the NAFI, its officers, employees, 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 NAFI. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the contractor at the contractor's 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)

**BL.089 USE AND POSSESSION PRIOR TO COMPLETION (NOV 2004)**

- (a) The NAFI or the Government shall have the right to take possession of 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 these portions of the work that the NAFI or 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 NAFI's or the Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the NAFI or 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 NAFI's or 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 NAFI or 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)

#### **BL.090 CLEANING UP (NOV 2004)**

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 NAFI or 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)

#### **BL.091 ACCIDENT PREVENTION, FIRE PROTECTION AND SANITATION (NOV 2005)**

If this contract is performed in whole or in part on premises owned or under the control of the United States Government and/or the NAFI, the Contractor shall conform to all safety regulations and requirements concerning such premises in effect any time during the performance of the contract and take all necessary steps and precautions to prevent accidents.

(End of clause)

#### **BL.092 AVAILABILITY AND USE OF UTILITY SERVICES (NOV 2005)**

(a) The Government/NAFI shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government/NAFI or, where the Government/NAFI, at reasonable rates determined by the Contracting Officer, produces the utility. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges.

(c) Before final acceptance of the work by the Government/NAFI, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(End of clause)

#### **BL.093 SCHEDULES FOR CONSTRUCTION CONTRACTS (NOV 2004)**

(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 schedules 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 such steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the NAFI. 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 the construction plan, 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 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 the contract.

(End of clause)

#### **BL.094 LAYOUT OF WORK (NOV 2004)**

The Contractor shall layout its work from established base lines and benchmarks indicated on the drawings furnished by the NAFI, 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 layout 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)

#### **BL.095 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (NOV 2004)**

(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/NAFI 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/NAFI 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/NAFI's reasons therefore. 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. The Contracting Officer will retain three sets (unless otherwise indicated) of all shop drawings and return the other set to the Contractor.

(h) This clause shall be included in all subcontracts at any tier.

(End of clause)

#### **BL.100 PRECONSTRUCTION CONFERENCE (NOV 2004)**

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

(End of clause)

#### **BL.102 BANKRUPTCY (NOV 2004)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government/NAFI contract numbers and contracting offices for all Government/NAFI contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

#### **BL.105 CHANGES AND CHANGED CONDITIONS (DEC 2005)**

- (a) The Contracting Officer may, in writing, order changes in the drawings and specifications within the general scope of the contract.
- (b) The Contractor shall promptly notify the Contracting Officer, in writing, of subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site before proceeding with the work.
- (c) If changes under paragraph (a) or conditions under paragraph (b) increase or decrease the cost of, or time required for performing the work, the Contracting Officer shall make an equitable adjustment (see paragraph (d)) upon submittal of a "proposal for adjustment" (hereafter referred to as proposal) by the Contractor before final payment under the contract.
- (d) The Contracting Officer shall not make an equitable adjustment under paragraph (b) unless-
  - (1) The Contractor has submitted and the Contracting Officer has received the required written notice; or
  - (2) The Contracting Officer waives the requirement for the written notice.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause (reference BL.122, Default (Fixed-Price Construction) and BL.120, Default (Fixed-Price Supply and Service)).

(End of clause)



#### **BL.112 WARRANTY OF CONSTRUCTION (NOV 2004)**

(a) In addition to any other warranties in this contract, the contractor warrants, except as provided in paragraph (j) 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 NAFI 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 NAFI takes possession.

(c) The Contractor shall remedy at the Contractor's expense any damage to NAFI or 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 NAFI 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 NAFI if directed by the Contracting Officer; and
- (3) Enforce all warranties for the benefit of the NAFI, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the NAFI 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 NAFI nor for the repair of any damage that results from any defects, gross mistakes, or fraud.

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

(End of clause)

#### **BL.118 TERMINATION FOR CONVENIENCE (NOV 2004)**

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the NAFI, in accordance with AR 215-4. In the event of such termination, the Contractor shall immediately stop all terminated work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work on the terminated portion(s) of the contract. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the NAFI, using its standard record keeping system, have resulted from the termination. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(End of clause)

#### **BL.122 DEFAULT (FIXED-PRICE CONSTRUCTION) (NOV 2004)**

(a) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will ensure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the NAFI 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 NAFI 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 NAFI 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 NAFI 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 arise 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 NAFI and /or Government, in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the NAFI or 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 the 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 has been issued for convenience of the NAFI.

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

(End of clause)

**BL.123 CONVICT LABOR (NOV 2004)**

- a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.
- b) The Contractor is not prohibited from employing persons-
- 1) On parole or probation to work at paid employment during the term of their sentence;
  - 2) Who have been pardoned or who have served their terms; or
  - 3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if-
    - i. The worker is paid or is in an approved work-training program on a voluntary basis;
    - ii. Representatives of local union central bodies or similar labor union organizations have been consulted;
    - iii. Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
    - iv. The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
    - v. The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as

**BL.124 ASSIGNMENT OF CLAIMS (NOV 2004)**

The contractor cannot assign any right or delegate any obligations under this contract without the prior written permission of the Contracting Officer.

(End of clause)

**BL.125 NONWAIVER OF DEFAULTS (NOV 2004)**

Any failure by the NAFI at any time, or from time to time, to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms or conditions in any way or the NAFI's right at any time to avail itself of such remedies as it may have for any breach or breaches of such terms and conditions.

(End of clause)

**BL.126 CHANGES-CONSTRUCTION (NOV 2004)**

- (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 general scope of this 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 NAFI-furnished facilities, equipment, materials, services, or site; or

(4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the NAFI 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 proposal, unless this period is extended by the NAFI. 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)

#### **BI.133 EMPLOYMENT REPORTS ON VETERANS (DEC 2010)**

(a) *Definitions.* As used in this clause, "Armed Forces service medal veteran," "disabled veteran," "other protected veteran," and "recently separated veteran," have the meanings given in the Equal Opportunity for Veterans clause BI.045.

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

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans.

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans; and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by completing the Form VETS-100A, entitled “Federal Contractor Veterans’ Employment Report (VETS-100A Report).”

(d) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date—

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

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

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor’s knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

#### **BL.138 EMPLOYMENT OF NON-UNITED STATES CITIZENS AND E-VERIFY PROGRAM (JUL 2012).**

a. Federal statutes and Executive Orders (EOs) require employers to abide by the immigration laws of the United States (U.S.) and to employ in the U.S. only individuals who are eligible to work in the U.S. In particular, the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603 (8 U.S.C. 1324a), requires employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, recruiting, or referring for a fee, of aliens who are not authorized to work in the U.S.

b. By its performance of this Contract, the Contractor certifies that it has complied and will comply with IRCA and all other U.S. statutes and EOs that address immigration and employment of individuals eligible to work in the U.S. The Contractor expressly certifies that it has verified the identity and employment eligibility of any individual who is hired for employment or continues to be employed to work under this Contract. The Contractor certifies further that it will ensure, prior to the award of any subcontract for work under this Contract that current and proposed subcontractors employing four or more individuals are in compliance with IRCA and all other applicable U.S. statutes and EOs. Questions regarding compliance under the IRCA may be directed to U.S. Department of Justice, Immigration and Naturalization Service.

c. The E-Verify program provides an internet-based means of verifying employment eligibility of workers employed in the U.S. Although the E-Verify program is NOT a substitute for any other employment eligibility verification required by Federal statutes and EOs, it is a free tool to facilitate compliance with the IRCA and other applicable statutes and EOs. Information on registration for and use of the E-Verify program is available at the Department of Homeland Security web-site: <http://www.dhs.gov/E-Verify>.

d. Definitions. As used in this clause-

“Alien” means any person not a citizen or national of the United States.

“United States” means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(End of Clause)

#### **BL139 BUY AMERICAN ACT – CONSTRUCTION MATERIALS (Sep 2010)**

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

“Commercially available off-the-shelf (COTS) item”—

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

(i) A commercial item;

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

(iii) Offered to the NAFI, 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 section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

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

“Cost of components” means--

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

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

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if—

(i) 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

(ii) The construction material is a COTS item. “Foreign construction material” means a construction material other than a domestic construction material. “United States” means the 50 States, the District of Columbia, and outlying areas.

*(b) Domestic preference.*

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the NAFI as follows: \_\_[Contracting Officer to list applicable excepted materials or indicate “none”]

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

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost (including transportation and handling costs) of foreign material by more than 50%. ;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

*(c) Request for determination of inapplicability of the Buy American Act.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for NAFI evaluation of the request, including--

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

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

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

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

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

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

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

(2) If the NAFI determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the NAFI determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

#### FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars) *
<i>Item 1</i>			
<b>Foreign construction material</b>			
<b>Domestic construction material</b>			
<i>Item 2</i>			
<b>Foreign construction material</b>			
<b>Domestic construction material</b>			

*[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]*

*[Include other applicable supporting information.]*

*[\*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

(End of Clause)



## BL.141 ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS (Nov 2014)

(a) *Executive Order 13658*. This contract is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

(b) *Minimum Wages*. (1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 1, 2015 and December 31, 2015 shall be \$10.10 per hour. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Secretary of Labor will publish annual determinations in the **Federal Register** no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on [www.wdol.gov](http://www.wdol.gov) (or any successor Web site). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semimonthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the 14(c) worker the greater commensurate wage.

(c) *Withholding*. The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 13658.

(d) *Contract Suspension/Contract Termination/Contractor Debarment*. In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR part 10, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased.

Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 10.52.

(e) The contractor may not discharge any part of its minimum wage obligation under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

(f) Nothing herein shall relieve the contractor of any other obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than \$10.10 (or the minimum wage as established each January thereafter) to any worker.

(g) *Payroll Records.* (1) The contractor shall make and maintain for three years records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

- (i) Name, address, and social security number.
- (ii) The worker's occupation(s) or classification(s)
- (iii) The rate or rates of wages paid.
- (iv) The number of daily and weekly hours worked by each worker.
- (v) Any deductions made; and
- (vi) Total wages paid.

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

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 10 and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor standards Act, as amended, and its implementing regulations; or any other applicable law.

(h) The contractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

(i) *Certification of Eligibility.* (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

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

(j) *Tipped employees.* In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the contractor may take a partial credit against the wage

payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658. To utilize this proviso:

- (1) The employer must inform the tipped employee in advance of the use of the tip credit;
  - (2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;
  - (3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and
  - (4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.
- (k) *Antiretaliation.* It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.
- (l) *Disputes concerning labor standards.* Disputes related to the application of Executive Order 13658 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 10. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.
- (m) *Notice.* The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(End of Clause)

#### **BL.142 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)**

- (a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.
- (b) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:
- (1) When no longer needed for contract performance.
  - (2) Upon completion of the Contractor employee's employment.

(3) Upon contract completion or termination.

(c) The Contracting Officer may delay final payment under a contract if the Contractor fails to comply with these requirements.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

(End of clause)

## **SECTION K**

### **BK.004 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (NOV 2004)**

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that-

(i) The Offeror and/or any of its Principals-

(A) Are \* are not \* presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have \* have not \*, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local)

contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are \* are not \* presently indicted for, or otherwise criminally or civilly charged by a Governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has \_\* has not \*, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not

necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which does a prudent person in the ordinary course of business dealings normally possess.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the NAFI, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

#### **BK.007 PLACE OF PERFORMANCE (NOV 2004)**

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation,

\_\_\_\_\_ \* intends, \* does not intend (check applicable block) to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks "intends" in paragraph (a) of this provision, it shall insert in the following spaces the required information:

Place of Performance Name and Address of Owner (Street Address, City, and Operator of the Plant State, County, Zip Code) or Facility if Other than Offeror or Respondent

(End of provision)

#### **BK.008 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (NOV 2004)**

The offeror represents that-

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

(b) It \* has, \* \_ has not filed all required compliance reports, If not, explain

\_\_\_\_\_;  
and

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

(End of provision)

**BK.017 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2010)**

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (*i.e.*, if it has any contract containing the clause Employment Reports on Veterans), it has submitted the most recent VETS-100A Report required by that clause.

(End of provision)

**BK.018 NOTICE OF BUY AMERICAN ACT REQUIREMENT – CONSTRUCTION MATERIALS (Feb 2009)**

(a) *Definitions.* “Commercially available off-the-shelf (COTS) item,” “construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act--Construction Materials” (BI.140).

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at Buy American Act--Construction Materials (Sep 2010)(BI.139) in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.*(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause Buy American Act--Construction Materials (Sep 2010)(BI.139).

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

(d) *Alternate offers.*(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at Buy American Act-- Construction Materials (Sep 2010)(BI.139), the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate DA Form 4069 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at Buy American Act--Construction Materials (Sep 2010)(BI.139) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at Buy American Act--Construction Materials (Sep 2010)(BI.139)

does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

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

## **SECTION L**

### **BL.001 DEFINITIONS (NOV 2004)**

(b) "Solicitation" means an invitation for bids (IFB) when using sealed bidding and a request for proposal (RFP) when an acquisition is negotiated.

(c) "Offer" means "bid" when sealed bidding is used and "proposal" when an acquisition is negotiated.

(End of provision)

### **BL.004 AMENDMENTS TO SOLICITATIONS (NOV 2004)**

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

(e) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer bid, (3) by letter or telegram, or (4) by facsimile, if facsimile offers are authorized in the solicitation. The NAFI must receive the acknowledgement by the time and at the place specified for receipt of offers.

(End of provision)

### **BL.007 SUBMISSION OF OFFERS (NOV 2004)**

(d) Offers and modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means)-

- Addressed to the office specified in the solicitation; and
- Showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror.

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

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

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

(h) Item samples, if required, must be submitted within the time specified for receipt of offers. Unless otherwise specified in the solicitation these samples shall be (1) submitted at no expense to the NAFI, and (2) returned at the sender's request and expense, unless they are destroyed during preaward testing.

(End of provision)

**BL.021 INSTRUCTIONS TO OFFERORS- (NOV 2004)**

(c) Definitions. As used in this provision-

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

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

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

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

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

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

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

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

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

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



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

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

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

- If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government/NAFI infrastructure not later than 5:00

p.m. one working day prior to the date specified for receipt of proposals; or

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

(f) It is the only proposal received.

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

(iii) Acceptable evidence to establish the time of receipt at the installation includes the time/date stamp of that installation on the proposal wrapper, other

documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government/NAFI personnel.

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

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

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

(e) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision, Evaluation of Foreign Currency Offers, is included in the solicitation.

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

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

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

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

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

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

(2) Mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) Contract award.

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

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

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

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

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

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

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

(8) The NAFI may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or

price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the NAFI.

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

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

(11) The NAFI may disclose the following information in postaward debriefings to other offerors:

- (i) The overall evaluated cost or price and technical rating of the successful offeror;
- (ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;
- (iii) A summary of the rationale for award; and
- (iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(End of provision)

#### **BL.023 TYPE OF CONTRACT (NOV 2004)**

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

(End of provision)

BL.025 SERVICE OF PROTEST (NOV 2004) [For use in solicitations for contracts expected to exceed the simplified acquisition threshold.]

(a) Protests, as defined in Army Regulation AR 215-4, NAF Contracting Regulation, are to be filed directly with the Contracting Officer as follows:

**US Army Corps of Engineers  
26 Federal Plaza, Room 1843  
New York, NY 10278**

(b) Any protest received shall be processed in accordance with AR 215-4.  
(End of provision)

#### **BL.025 SERVICE OF PROTEST (NOV 2004)**

(a) Protests, as defined in Army Regulation AR 215-4, NAF Contracting Regulation, are to be filed directly with the Contracting Officer as follows:

**US Army Corps of Engineers  
26 Federal Plaza, Room 1843**

**New York, NY 10278**

- (b) Any protest received shall be processed in accordance with AR 215-4.  
(End of provision)

**BM.007 EVALUATION OF OPTIONS (NOV 2004)**

For the purposes of award, the NAFI will evaluate the basic requirement along with all options.  
Evaluation of options will not obligate the NAFI to exercise the option(s).

(End of provision)

Section 00 73 00 - Supplementary Conditions

SPECIAL CONTRACT REQUIREMENTS

SECTION 00 73 00.00 18 SPECIAL  
CONTRACT REQUIREMENTS **03/15**

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

U.S. ARMY CORPS OF ENGINEERS (USACE)

EM 385-1-1 (2014) Safety and Health Requirements Manual

UNIFIED FACILITIES CRITERIA (UFC)

UFC 3-400-02 (2003) The purpose of this document is to provide an overview of and instructions for access to climatological data available for use by engineers designing government structures.

1.2 COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK

a. The Contractor shall be required to (i) commence work under this contract within five (5) calendar days after the date the Contractor receives the Notice to Proceed, (ii) prosecute the work diligently, and (iii) complete the entire work ready for use, not later than 365 calendar days after the date the Contractor receives the notice to proceed, except in case the Contracting Officer determines that seeding is not feasible during the construction period, the Contractor shall accomplish such seeding in the first planting period following the contract completion date. This action will not operate to extend the performance time for the balance of the work. The time stated for completion shall include final cleanup of the premises.

b. Location: The site of work is located at Joint Base - McGuire Dix Lakehurst JB MDL, Fort Dix, along West 8th Street between New York Avenue and Pennsylvania Avenue. The site of the work is on a military reservation and all rules and regulations issued by the Commanding Officer covering general safety, security, and sanitary requirements, etc., shall be observed by the Contractor.

c. The Contractor shall furnish all labor, materials, equipment, and services for the following work: design and construction for infrastructure upgrades as described in the solicitation package

d. All work shall be in accordance with the drawings and specifications or instructions attached hereto and made a part thereof, or to be furnished hereafter by the Contracting Officer and subject, in every detail, to his supervision, direction, and instructions.

1.3 Disclosure of the Magnitude of Construction Projects This project is estimated between \$5,000,000 and \$10,000,000.

1.4 GOVERNMENT RESIDENT MANAGEMENT SYSTEM AND CONTRACTOR QUALITY CONTROL SYSTEM (QCS) MODULE

The Government will utilize an in-house Contract Administration program entitled "Resident Management System" (RMS). The Contractor shall utilize a Government furnished Quality Control System (QCS) Programming Module.

See Section 01 45 00.15 10 RESIDENT MANAGEMENT SYSTEM CONTRACTOR MODE(RMS CM) for requirements.

#### 1.5 PRECONSTRUCTION CONFERENCE

a. The Contracting Officer, or his Representative, will arrange a preconstruction conference after award of contract and before commencement of work. The Contracting Officer's representative will notify the Contractor of the time and date set for the meeting. At this conference, the Contractor shall be oriented with respect to Government procedures and line of authority, contractual, administrative, and construction matters. Additionally, a schedule of required submittals will be discussed.

b. The Contractor shall bring to this conference the following items in either completed or draft form:

- The Contractor's order of work
- Accident Prevention Plan (See Accident Prevention Clause in Section 00 72 00 and paragraph SAFETY AND HEALTH REQUIREMENTS MANUAL in this Section)
- Quality Control Plan (See Section 01 45 00.00 10 QUALITY CONTROL)
- Letter appointing Superintendent
- List of subcontractors, if any
- Environmental Protection Plan (See Section 01 57 19 TEMPORARY ENVIRONMENTAL CONTROLS)

#### 1.6 COORDINATION PERIOD

In addition to contract clause titled PRECONSTRUCTION CONFERENCE, the Contractor shall reserve a 2 workday period of time no later than one month following the contract preconstruction conference for coordination. The Contractor's project management team responsible for this project shall participate.

During the 2-day coordination period the Contractor and the Government will exchange information related to the government regulations and procedures, points of contact, relevant design information and general discussion about the execution and coordination of the project. The Contractor shall dedicate his management team for this 2-day coordination period.

#### 1.7 LIQUIDATED DAMAGES--CONSTRUCTION

a. If a delay to the NTP date is a result of the Contractor, an extension will not be given. If the Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to the Government as liquidated damages, the sum of \$1,275.00 for each day of delay.

b. If the Government terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable

time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

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

d. At a time before the project is physically complete but is functionally complete to the satisfaction of the Government, the Government at its sole discretion may agree to accept transfer of the facility or project provided that the remaining work to be done ("punchlist") is completed no later than 30 days from the date of transfer.

In this case the contractor shall pay liquidated damages for punchlist items not completed in the daily amount of \$319.00 per day commencing after 30 days of project transfer or after date required for project completion (including all extensions), whichever occurs later.

#### 1.8 Insurance -- Work on a Government Installation

a. The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance as follows:

(1) General Liability Insurance (comprehensive form of policy) Bodily Injury Liability - \$500,000 per occurrence Property Damage Liability - \$20,000 per accident.

(2) Automobile Liability Insurance Bodily Injury Liability - \$200,000 per person and \$500,000 per accident Property Damage Liability - \$20,000 per accident.

(3) Workmen's Compensation and Employer's Liability Insurance Compliance with all applicable workmen's compensation and occupational diseases statutes is required. Employer's liability coverage in the minimum amount of \$100,000 is required.

b. Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective –

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

#### 1.9 IMPLEMENTING WARRANTY

Refer to section 01 78 00 CLOSEOUT SUBMITTALS

#### 1.10 CERTIFICATES OF COMPLIANCE

Any certificates required for demonstrating proof of compliance of materials with specification requirements shall be executed in 4 copies. Each certificate shall be signed by an official authorized to certify in behalf of the manufacturing company and shall contain the name and address of the Contractor, the project name and location, and the quantity and date or dates of shipment or delivery to which the certification apply. Copies of laboratory tests reports submitted with certificates shall contain the name and address of the testing laboratory and the date or dates of the tests to which the report applies. Certification shall not be construed as relieving the Contractor from furnishing satisfying material, if, after tests are performed on selected samples, the material is found not to meet the specific requirements (ECI 7-670.3)

#### 1.11 VERIFICATION OF SMALL BUSINESS UTILIZATION

- a. This clause is applicable to small business concerns whose contracts exceed \$1,000,000.
- b. UTILIZATION OF SMALL BUSINESS CONCERNS AND DISADVANTAGED BUSINESS CONCERNS, in effect on the date of this Contract, the Contracting Office may survey the extent of small and small disadvantaged business utilization under this Contract. The Contractor may be required to report to the Contracting Officer statistical data on the number and dollars amounts of subcontracting awards with small business and small disadvantaged businesses.
- c. As appropriate, the Contracting Officer may require one or more follow-up reports to the initial report.
- d. The Contractor agrees to insert this clause in any subcontract that may exceed \$1,000,000, including this subparagraph d.

#### 1.12 BID GUARANTEE

See contract clause entitled BID GUARANTEE in Specifications section 00 72 00 CONTRACT CLAUSES.

#### 1.13 RECORD DRAWINGS

See specifications section 01 78 00 CLOSEOUT SUBMITTAL for as-built and Record Drawings requirements for CAD Drafting Standard.

#### 1.14 AVAILABILITY OF CAD DRAWING FILES

Refer to SOURCE DRAWING FILES in specifications section 01 78 00 CLOSEOUT SUBMITTALS.

#### 1.15 PHYSICAL DATA

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

- a. Weather Conditions: See UFC 3-400-02 for an overview of and instructions for accessing climatological data.
- b. Transportation Facilities:
  - (1) Highways and Roads: Lancaster Drive and McGuire AFB Road serve the locality of the proposed work. All deliveries shall proceed through the McGuire Main Gate. The contractor will be responsible for coordinating all deliveries with the installation. Roads within the military reservation proposed to be used by the Contractor, shall be subject to prior approval of the post authorities and such roads, if used, shall be maintained throughout construction and shall be restored to as good condition as existed prior to their use. All costs for the use of existing transportation facilities, for the construction of temporary facilities, and for maintenance, repair, removal and restoration shall be borne by the Contractor.



#### 1.16 LAYOUT OF WORK

The contractor shall lay out his work from the dimensions indicated on the drawings and shall be responsible for all measurements in connection therewith.

#### 1.17 BULLETIN BOARD

Refer to section 01 50 00 TEMPORARY CONSTRUCTION FACILITIES AND CONTROLS, paragraph BULLETIN BOARD.

#### 1.18 AVAILABILITY AND USE OF UTILITY SERVICES

Refer to section 01 50 00 TEMPORARY CONSTRUCTION FACILITIES AND CONTROLS, paragraph AVAILABILITY AND USE OF UTILITY SERVICES.

#### 1.19 NO WAIVER BY GOVERNMENT

The failure of the Government, in any one or more instances, to insist upon the strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon such terms or option on any future occasion.

#### 1.20 TIME EXTENSIONS (APR 1984)

a. Notwithstanding any other provisions of this contract, it is mutually understood that the time extensions for changes in the work 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 so delayed and that the remaining contract completion dates for all other portions of the work will not be altered and may further provide for an equitable readjustment of liquidated damages under the new completion schedule.

##### b. TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER:

1. This provision specifies the procedure for determination of time extension for unusually severe weather in accordance with the contract clause entitled "Default: (Fixed Price Construction)." In order for the Contracting Officer to award a time extension under this clause, the following conditions must be satisfied:
  - a. The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.
  - b. The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the Contractor.
2. ADVERSE WEATHER FOR WORK: The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location and will constitute the base line for monthly weather time evaluations.

The Contractor's progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY WORK DAYS BASED ON (5) DAY WORK											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
7	4	5	5	4	5	4	4	4	5	4	6

3. Upon acknowledgment of the Notice to Proceed (NTP) and continuing throughout the contract, the Contractor will record on the daily CQC report, the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in paragraph 2 above, the Contracting Officer will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and issue a modification in accordance with the contract clause entitled "Default (Fixed Price Construction)".

#### 1.21 FIELD OFFICE

Refer to section 01 50 00 TEMPORARY CONSTRUCTION FACILITIES AND CONTROLS

#### 1.22 PROCEDURES FOR SUBMISSION AND PAYMENT OF ALL CONTRACT

PAYMENTS In addition to the requirements contained in contract clause titled PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS, and PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS the following will apply to all payments made under this contract:

a. At the time of submission of the project schedule, the Contractor shall submit for approval by the Contracting Officer or his authorized representative a breakdown of the contract work which shall be to the degree of detail required by the Contracting Officer or his representative to effect reasonable progress payments. The Contracting Officer or his representative will review this breakdown within 30 calendar days after receipt and either advise the Contractor that it is approved or disapproved, and if disapproved the reasons for disapproval. Only after the breakdown is approved will any payment invoice be accepted from the Contractor. The Contracting Officer can determine it is in the best interest of the Government to make payment without an approved breakdown, however, in no case will more than 10% of the contract amount be paid unless the breakdown is approved.

b. The Contractor shall submit requests for payment through submission of a proper invoice to the office or person(s) designated in subparagraph (c). For purposes of payment a "proper invoice" is defined as the following:

(1) An estimate of the work completed in accordance with the approved breakdown indicating the percentage of work of each item and the associated costs.

(2) A properly completed ENG Form 93 and 93a (where required).

(3) All contractual submissions indicated elsewhere in this contract to be submitted with payment, such as updated progress schedules, updated submittal registers, etc.

(4) The following certification executed by a responsible official of the organization authorized to bind the firm. A "responsible official" is either a corporate officer, partner, or owner, in the case of a sole proprietorship.

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

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

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

( 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;

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

( 5 ) All required prime and subcontractor payrolls have been submitted.

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(Name)

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(Title)

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(Date)

c . The Government will designate the office or person(s) who shall first receive the invoice submissions and the Contractor shall be so notified at the pre-construction conference. In addition to the designated Project Engineer, the Contractor shall at the same time submit one copy of the detailed breakdown and the ENG Form 93 and 93a to the Area Engineer.

d . The Government representative will return any request for payment that is deemed improper within 7 days of receipt and will specify the defects. If the defect concerns a disagreement as to the amount of work performed and/or the amount of the payment being submitted, the Government and the Contractor's representative will meet to resolve the differences and reach agreement. Upon agreement, the Contractor shall submit a new breakdown and ENG Form 93 and 93a and any other submissions requiring correction. These shall be incorporated with the previous submittal and will then constitute a proper invoice.

e. If agreement cannot be reached, the Government will determine the proper amount per contract clause, PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS and process the payment accordingly. In this event, a "proper invoice" for prompt payment purposes will not have been submitted to the Government.

f. The Government will pay the Contractor in accordance with the following time frames:

(1) Progress Payments. From the date a "proper invoice" is received, in accordance with subparagraphs b and d, the Government will issue a check within 14 calendar days.

(2) Reduction in Retainage Payment. If during the course of the contract, a reduction in retainage payment is required, the Government will issue a check within 14 calendar days after the approval of the release to the Contractor by the Contracting Officer or his authorized representative.

(3) Final Payment. A final payment request will not be considered valid until the Contractor has fulfilled all contract requirements including all administrative items, as-built drawings, training, payrolls, warranties, etc. and has submitted a release of claims. When the Contractor has fulfilled all contract requirements and a "proper invoice" has been submitted, the Government shall issue a check within

14 days from the date of acceptance of the project by the Contracting Officer.

#### 1.23 PAYMENTS FOR MATERIALS DELIVERED OFF-SITE

(a) Pursuant to Payments Under Fixed Price Construction Contracts, materials delivered to the contractor at locations other than the site of the work may be taken into consideration in making payments if included in payment estimates and if all the conditions of the General Provisions are fulfilled. Payment for items delivered to locations other than the work site shall be limited to:

- (1) Materials which have been approved, if required by the technical provisions; or
- (2) Materials that have been fabricated to the point where they are identifiable to an item of work required under this contract; or

(b) Payment for materials delivered off-site shall be made only after receipt of paid invoices listing the value of material and labor incorporated in the items along with a canceled check showing the prime contractor's title to the items delivered off site.

#### 1.24 PROGRESS PAYMENTS

Progress Payments made pursuant to the PAYMENTS TO CONTRACTOR clause for any item of work in the bid schedule shall be based on the Contract unit price or lump sum amount set forth in the bid schedule for that item of work. If the amount of the unit price or lump sum bid for any item of work is in excess of 125% of the Government estimate for such item, the Contracting Officer may require the Contractor to produce cost data to justify the price of the bid item.

Failure to justify the bid item price to the satisfaction of the Contracting Officer may result in payment of an amount equal to 125% of the Government estimate for such bid item upon completion of work on the item and payment of the remainder of the bid

item price upon final acceptance of all contract work.

#### 1.25 PRICING OF ADJUSTMENTS

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes clause or any other clause of this contract shall be in accordance with Section 00 72 00

##### PRICE ADJUSTMENTS (DEC 2012)

The term “pricing adjustments”, as used in paragraph (a) of the clauses entitled “Price Reduction for Defective Certified Cost or Pricing

Data-Modifications”, “Subcontractor Certified Cost or Pricing Data,” and “Subcontractor Certified Cost or Pricing Data- Modifications,” means the aggregate increases and/or decreases in cost plus applicable profits.

#### 1.26 LABOR-ADDITIONAL REQUIREMENTS

Fringe benefits statement: The method of payment of applicable fringe benefits will be indicated on DD Form 879, Statement of Compliance, and attached to each weekly payroll.

#### 1.27 DAMAGE TO WORK

The responsibility for damage to any part of the permanent work shall be as set forth in the article of the contract clause entitled "PERMITS AND RESPONSIBILITIES". However, if in the judgment of the Contracting Officer, any part of the permanent work performed by the Contractor is damaged by flood, earthquake, hurricane, severe coastal storm or tornado, which damage is not due to the failure of the Contractor to take reasonable precautions or to exercise sound engineering and construction practices in the conduct of the work, the Contractor will make the repairs as ordered by the Contracting Officer and full compensation for such repairs will be made at the applicable Contract unit or lump-sum prices as fixed and established in the Contract. If, in the opinion of the Contracting Officer, there are no Contract unit or lump sum prices applicable to any part of such work, an equitable adjustment, pursuant to Contract Clause entitled CHANGES, will be made as full compensation for the repairs of that part of the permanent work for which there are not applicable Contract unit or lump-sum prices. Except as herein provided, damage to all work, utilities, materials, equipment, and plant, including temporary construction and utilities, pavements, and other property along the routes used by the Contractor's pipelines and/or land vehicles, shall be repaired to the satisfaction of the Contracting Officer, the New Jersey, and the utilities companies, at the Contractor's expense regardless of the cause of such damage.

#### 1.28 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

a. "Hazardous material," includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

b. The Contractor shall submit, a Material Safety Data Sheet, (OUS Department of Labor Form OSHA 174) meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material 5 days before delivery of the material, whether or not the Contractor is the manufacturer of these items. This obligation applies

to all materials delivered under this contract that will involve exposure to hazardous materials or items containing these materials.

c. Neither the requirements of contract clause titled HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

d. Nothing contained in this contract clause titled HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

e. The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials; (ii) Obtain medical treatment for those affected by the material; and (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

f. The Contractor shall insert this requirement, including this paragraph (f), with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this contract involving hazardous material.

g. SAFETY AND HEALTH REQUIREMENTS MANUAL if this contract is for construction or dismantling, demolition, or removal of improvements with any Department of Army agency or component, the Contractor shall comply with all pertinent provisions of **EM 385-1-1**. The latest edition of **EM 385-1-1** and its changes are available at <http://www.hq.usace.army.mil> (at the HQ homepage select Safety and Occupational Health). Contractor shall be responsible for complying with the current edition and all changes posted on the web as of effective date of this solicitation.

h. Before commencing the work, the Contractor shall: (1) Submit a written proposal for implementing the Accident Prevention Plan; and (2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

#### 1.29 CONSTRUCTION PROJECT SIGNS, PUBLIC SAFETY SIGNS

Refer to section **01 50 00** TEMPORARY CONSTRUCTION FACILITIES AND CONTROLS, paragraph "Project and Safety Signs" and **01 58 00** PROJECT IDENTIFICATION, paragraph "PROJECT SIGN."

### 1.30 VEHICULAR AND OTHER TRAFFIC CONTROL

Refer to section 01 50 00 TEMPORARY CONSTRUCTION FACILITIES AND CONTROLS, paragraph TEMPORARY TRAFFIC CONTROL

### 1.31 ROAD CLOSURES AND UTILITY OUTAGES

a. Utility Outages: Refer to section 01 14 00 WORK RESTRICTIONS, paragraph "Utility Cutovers and Interruptions."

b. Road Closures: Refer to section 01 50 00 TEMPORARY CONSTRUCTION FACILITIES AND CONTROLS, paragraph "TRAFFIC PROVISIONS."

### 1.32 ACCESS ROUTES, CONTRACTOR AREAS, DELIVERY, STORAGE AREA AND VISITOR CONTROL

a. The Contractor shall utilize only entry points designated by the Contracting Officer Representative. Contractor's personnel and construction equipment will not be permitted in any place other than the project site and the haul route for the borrow and spoil sites, unless specifically authorized by the Contracting Officer. A request for authorization to use alternate limited access shall be made by the Contractor to the Contracting Officer at least 7 calendar days in advance.

b. The Contractor shall utilize the project site areas for his daily staging. Temporary chain-link fence shall be installed around the staging areas to include field trailers, storage containers, and equipment/material storage, and removed upon completion of construction. Trailers, materials, or equipment shall not be placed or stored outside the project site unless such trailers, materials or equipment are assigned a separate and distant storage area by the Contracting Officer away from the vicinity of the staging area but within military boundaries. At the end of each work day mobile equipment, such as tractors, wheeled lifting equipment, cranes, backhoes and like equipment, shall be parked within the project site. The following shall remain fully accessible: hydrants, standpipes and access ways. The Contractor shall be responsible for all temporary connections (power, water telephone, etc.) to the project site. The Contractor shall maintain the area in a clean and neat condition. Parking for Contractor's employees shall be on the project site. The Contractor will return all disturbed areas to their original condition unless specifically authorized by the Contracting Officer.

c. Off-site storage areas are not available.

d. The Contractor shall be responsible for the control of material deliveries, vendors, suppliers, prospective employees and other authorized personnel entering the project area as relates to this contract. The Contractor shall install signs at entrances to the project directing deliveries and visitors to the proper entry points.

e. The Contractor shall be permitted to utilize the area for material storage and unloading, material hoists, rubbish containers, rubbish chutes (if any), temporary office and personnel dressing facilities, and all other items required for staging. Contractor shall maintain the grounds within his area. Grass and weeds shall be cut at least weekly during the growing season.

f. The Contractor shall provide chemical toilets for his personnel in the

project site, and shall be responsible for cleaning and servicing these toilets in accordance with pertinent health regulations and assure a frequency of service as required to prevent odors or other nuisance. Use of toilet facilities by Contractor's employees within surrounding buildings will not be permitted.

g. The Contractor shall provide weather tight and waterproof storage facilities for all materials stored at the site and required to be incorporated into the work.

h. The Contractor shall remove rubbish containers when full or every 2 weeks whichever comes first.

i. The color of dumpsters, trailers, and storage sheds and portable latrines shall be approved by the Contracting Officer.

j. All materials, trailers, and storage sheds in staging and construction areas shall be elevated and stored a minimum of 3 feet from any structure or fixed object. Trailers shall have doors on both ends.

k. Contractor shall limit employees to his work site.

#### 1.33 EXISTING PARKING

The existing parking for visitors and Government employees shall not be used by the Contractor. No contractor or subcontractor employee parking is available near the immediate facility and no parking on the shoulders of the roads is allowed.

#### 1.34 MAINTENANCE OF ACCESS ROADS

a. The Contractor shall be responsible for the maintenance of access roads at the construction site. Maintenance of access roads shall include snow removal. The Contractor shall remove snow piles and rows when they affect safety, hamper emergency and fire vehicles, or block proper drainage.

b. The Contractor shall provide and allow full access to the project site to all traffic, except as noted, to other contractors and authorized personnel as designated by the Contracting Officer.

c. **AUTHORIZED CONSTRUCTION AREA AND TRESPASSING:** The Contractor shall not inflict damage upon land properties, roads outside the authorized construction areas by unwarranted entry upon, driving over curbs, passage through, damage to or disposal of, material on such land or property, or overloading of roads. The Contractor may make a separate agreement with any other party, regarding the use of, or right to, land or facilities outside the Installation. If such an agreement is made, it shall be in writing and a copy shall be furnished to the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents free from liability of any nature or kind arising from any trespassing or damage occasioned by Contractor operations.

d. Refer to section **01 50 00**, paragraph "Maintenance of Traffic"

#### 1.35 FIRE PROTECTION

The Contractor will provide fire protection in accordance with Section 9 of **EM 385-1-1**, US Army Corps of Engineers Safety and Health Requirements Manual. The Contractor's means of providing such protection will be



included in his Health and safety plan as required by the contract. The plan shall include fire exits and access routes during construction and during partial acceptance of the facilities, if any. Although the Fire department will respond to emergencies, the capabilities of this department will be limited by its available equipment and access to the construction sites.

The Fire Department does not permit open flame heating devices or tar kettles on roofs.

#### 1.36 SITE AND BUILDING SECURITY AND VEHICLE IDENTIFICATION

Refer to section 01 14 00 Work Restrictions

#### 1.37 UTILITY LOCATION VERIFICATION

Refer to section 01 35 26 GOVERNMENTAL SAFETY REQUIREMENTS, paragraph "EXCAVATIONS"

#### 1.38 ARTIFACTS, PRESERVATION & PROTECTION OF HISTORICAL, ARCHAEOLOGICAL AND CULTURAL RESOURCES

Refer to section 01 57 19 TEMPORARY ENVIRONMENTAL CONTROLS, paragraph "PROTECTION OF CULTURAL RESOURCES"

#### 1.39 CONNECTION WITH WORK OF OTHER CONTRACTS

During the period of this contract, other contracts may be in force for the construction of other features of work on or adjacent to the site of work being accomplished under this contract. The Contractor shall arrange his plant and shall schedule and perform the work as to effectively cooperate with all other contractors and Government agencies. It is the Contractor's responsibility to know the extent of the limits of his contract. No direct or extra compensation will be allowed on account of the cooperation required.

a. At all points of connection with work of other contracts, the Contractor shall have weekly coordination meetings until all connections have been completed with the adjoining contractor(s) to insure proper and timely connections.

b. Where the work under this contract is completed before that of the adjoining contractor, the Contractor shall terminate his work in an approved manner ready for future connection by the adjoining contractor. Pipes and conduits shall be closed with suitable caps or plugs that will prevent entry of dirt or debris, but that are readily removable when final connections are made. For underground lines that are back-filled, approved type markers that extend above the ground surface shall be provided to facilitate future location of the lines by the adjoining contract.

c. Where the work of the adjoining contractor is already in place, the Contractor shall perform all work required to effect the necessary connection, including locations of underground lines, removing of caps, providing necessary adapters or joining pieces, and all related incidental work for necessary for a proper, secure connection.

1.40 WORKING CONDITIONS, WORKING HOURS, AND NON-WORKING DAYS Refer to section 01 14 00 WORK RESTRICTIONS

The Contractor shall comply with paragraph Fatigue Management Plan (FMP) of EM 385-1-1.

1.41 COORDINATION OF TRADES

a. The contract drawings are in part diagrammatic and show the general arrangement of duct, piping and other mechanical and electrical trades. The Contractor must have a competent engineer on the project site to coordinate all fieldwork and shop drawings of the various trades prior to installation and/or submission of field or shop drawings for approval. The Contractor shall allot spaces to the various trades prior to installation of the work. In spaces where all the various installations cannot be accommodated, the Contractor shall notify the Contracting Officer and shall submit alternate solutions as to its solution at no cost to the Government. The decision of the Contracting Officer shall be final.

b. The Contractor shall be responsible for the coordinated drawings of the various trades showing locations and sizes of all sleeves, electric outlets, inserts, piping, shafts, hangers, lights, ducts, catwalks, pads, chases, sprinklers, smoke detectors, soffits, fascias, steel trusses, etc. Composite signed-off coordinated shop drawings shall be developed at 3/8" equals 1'-0 scale showing all mechanical electrical work in hung ceilings and chases.

1.42 PARTNERSHIP IMPLEMENTATION PLAN

Refer to section 01 30 00 ADMINISTRATIVE REQUIREMENTS, paragraph "PARTNERING."

1.43 DIGGING PERMIT

Refer to section 01 11 00 Summary of Work, paragraph "LOCATION OF UNDERGROUND UTILITIES."

1.44 COORDINATION MEETINGS

Refer to section 01 45 00.00 10 QUALITY CONTROL. The Contractor shall provide typed minutes of each meeting within 3 days of meeting.

Routine coordination meetings will be scheduled by the Contracting Officer throughout the life of this Contract. Coordination meetings will be held to discuss contract administration, Contractor quality control, phasing, scheduling, and other aspects relating to this construction. The Corps of Engineers and the Contractor will be represented at each of these meetings. Similar information concerning replacement personnel shall be forwarded to the Contracting Officer, should any replacement be required at any time during the life of this Contract. Coordination meetings will be scheduled to occur on a weekly basis.

1.45 PROGRESS MEETINGS

Refer to specifications section 01 32 01.00 10 PROJECT SCHEDULE, paragraph "WEEKLY PROGRESS MEETINGS."

#### 1.46 SUPERINTENDENCE OF SUBCONTRACTORS

a. The Contractor shall be required to furnish the following, in addition to the superintendence required by the Contract Clause titled, "SUPERINTENDENCE BY THE CONTRACTOR".

(1) If more than 50% and less than 70% of the value of the contract work is subcontracted, one superintendent shall be provided at the site and on the Contractor's payroll to be responsible for coordinating, directing, inspecting and expediting the subcontract work.

(2) If 70% or more of the value of the work is subcontracted, the Contractor shall be required to furnish two such superintendents to be responsible for coordinating, directing, inspecting and expediting the subcontract work.

b. If the Contracting Officer, at any time after 50% of the subcontracted work has been completed, finds that satisfactory progress is being made, he may waive all or part of the above requirement for additional superintendence subject to the right of the Contracting Officer to reinstate such requirement if at any time during the progress of the remaining work he finds that satisfactory progress is not being made.

#### 1.47 CLAIMS PROCESSING PROCEDURES

The following shall be submitted to the Contracting Officer at the following address: US Army Corps of Engineers, New York District, 26 Federal Plaza, Room 1843, NY, NY 10278-0090:

a. Claims referencing or mentioning the Contracts Disputes Act of 1978.

b. Request for a written decision by the Contracting Officer.

c. Claims certified in accordance with the Contract Disputes Act of 1978.

No other Government representative is authorized to accept such a request. A copy shall also be provided to the authorized Contracting Officer's Representative. The Contractor shall also provide the

Contracting Officer with a copy of requests for additional time, money, or interpretation of contract requirements which were provided to the authorized representative of the Contracting Officer that have not been resolved after 90 days.

#### 1.48 SCHEDULING AND DETERMINATION OF PROGRESS

Pursuant to the contract clause, SCHEDULES FOR CONSTRUCTION CONTRACTS, the Contractor shall prepare and submit for approval a practicable project schedule. The type of schedule and detailed requirements as well as timing of this submittal shall be as specified in specification section

01 32 01.00 10 PROJECT SCHEDULE.

This schedule will be the medium through which the timeliness of the Contractor's construction effort is appraised.

When changes are authorized that result in contract time extensions, Contractor shall submit a modified schedule for approval by the Contracting Officer.

The terms of Contract Clause, SCHEDULING FOR CONSTRUCTION CONTRACTS, with reference to overtime, extra shifts, etc., may be invoked when the

Contractor fails to start or complete work features or portions of same by the time indicated by the milestones dates on the approved project schedule, or when it is apparent to the Contracting Officer from the Contractor's actual progress that these dates will not be met.

Neither on the project schedule as originally submitted nor on any updated periodic schedules which the Contractor is required to prepare and submit, shall be actual progress to be entered include or reflect any materials which even though on the site, are not yet installed or incorporated in the work. For payment purposes only, an allowance will be made by the Contracting Officer of up to 100 percent of the invoiced cost of materials or equipment delivered to the site but not incorporated into the construction, pursuant to Contract Clause, PAYMENT UNDER FIXED-PRICE CONSTRUCTION CONTRACTS. The making of such an allowance will be contingent upon a determination by the Contracting Officer that the Contractor's compliance with the quality control requirements of the contract is more than satisfactory.

#### 1.49 GATE ACCESS FORMS FOR ENTERING

Refer to section 01 14 00 WORK RESTRICTIONS, paragraph 1.1 CONTRACTOR ACCESS AND USE OF PREMISES..

#### 1.50 QUALIFICATIONS FOR CONDUCT OF ELECTRICAL WORK

Refer to specification section 01 35 26 GOVERNMENTAL SAFETY REQUIREMENTS, paragraph "ELECTRICAL."

#### 1.51 DEPARTMENT OF ARMY RADIATION PERMITS

Refer to specifications sections 01 14 00 WORK RESTRICTIONS and 01 35 26 GOVERNMENTAL SAFETY REQUIREMENTS

#### 1.52 COMPLIANCE WITH ENDANGERED SPECIES ACT

Refer to specifications section 01 57 19 TEMPORARY ENVIRONMENTAL CONTROLS, paragraph "PROTECTION OF NATURAL RESOURCES."

## PART 2 PRODUCT

2.1 Not Used

## PART 3 EXECUTION

3.1 Not Used

### WAGE RATES

NJ180027 03/16/2018 NJ27

Affirmative Action GOALS:

Burlington County NJ  
For Minorities: 17.3%

For Women: 6.9%

2. Please verify with the undersigned, a minimum of 10 days prior to bid opening/proposal receipt, that the rates provided on this date are still in effect. Any changes will have to be incorporated into the solicitation by amendment. It is recommended that the "wage rate in effect" be confirmed at the time of any amendment.
3. Note that in negotiated procurements, the wage rates in effect on the date of contract award (not at proposal due date or FPR date) are the ones to be incorporated in the contract. Also note that the then current wage decision is to be incorporated into the instant contract at exercise of any option period regardless of the method of solicitation (IFB, RFQ or RFP).
4. Please ensure that this decision is incorporated into the applicable solicitation and its resultant contract as set forth in FAR 22.404-6.
5. The solicitation and resultant contract must state that this project is classified as Building, NJ Wage Rates are applicable.

General Decision Number: NJ180027 03/16/2018 NJ27

Superseded General Decision Number: NJ20170027

State: New Jersey                      aed 03/29/2018

Construction Type: Building

County: Burlington County in New Jersey.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually.

Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
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0	01/05/2018
1	01/12/2018
2	02/09/2018
3	03/16/2018

ASBE0014-003 05/01/2017

BURLINGTON COUNTY (City of Beverly; Townships of Cinnaminson, Delanco, Delron, Edgewater Park, Evesham, Hainesport and Lumberton; Borough of Maple Shade; Township of Medford; Borough of Medford Lakes;

Townships of Moorestown and Mt. Laurel; Borough of Palmyra; Township of Riverside; Borough of Riverton; Townships of Shamong, Southampton, Tabernacle, Westhampton and Willingboro)

Rates      Fringes

ASBESTOS WORKER/HEAT & FROST

INSULATOR (Includes the application of all insulating materials, protective coverings, coatings and finishings to all types of mechanical systems; also, the application of firestopping material to openings and penetrations in walls, floors, ceilings and curtain walls; also, all lead abatement).....\$ 47.30      34.64

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ASBE0089-003 07/01/2016

BURLINGTON COUNTY (Townships of Bordentown, Burlington, Chesterfield, Easthampton, Florence, Mansfield, Mt. Holly, New Hanover, North Hanover, Pemberton, Springfield and Woodland)

Rates      Fringes

ASBESTOS WORKER/HEAT & FROST

INSULATOR ((includes the application of all insulating materials, protective coverings, coatings and finishings to all types of mechanical systems; also, the application of firestopping material to openings and penetrations in walls, floors, ceilings and curtain walls; also, all lead abatement)).....\$ 42.02      31.83

PAID HOLIDAYS:

The last day prior to the Christmas and New Year's Day observed holiday: 4 hrs. pay.

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BRNJ0002-013 11/01/2016

Rates      Fringes

Bricklayer.....\$ 40.00      29.29

Work on high stacks: 22% per hour additional.

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BRNJ0007-012 07/01/2016

	Rates	Fringes
Marble setter.....	\$ 57.32	37.08

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BRNJ0007-014 06/06/2016

	Rates	Fringes
TERRAZZO WORKER/SETTER.....	\$ 46.50	31.38

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BRNJ0007-017 11/22/2016

	Rates	Fringes
Tile finisher.....	\$ 40.17	25.88
Tile setter.....	\$ 46.50	31.38

Tile finisher:

Work grouting all epoxy: \$10.00 additional per day.

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CARP0006-009 11/01/2017

	Rates	Fringes
CARPENTER (Scaffold Builder)....	\$ 47.92	57%

The first sixty feet at the regular rate, 10% per hour  
additional for each additional fifty feet thereafter.

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CARP0006-010 11/01/2017

	Rates	Fringes
CARPENTER Including Acoustical Ceiling Installation, Drywall Hanging, Formwork, Batt and Blown Insulation...	\$ 47.92	57%

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CARP0029-006 11/01/2017

	Rates	Fringes
Soft floor layer.....	\$ 47.92	57%

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CARP0454-009 05/01/2016

	Rates	Fringes
PILEDRIVERMAN.....	\$ 43.95	31.32

## PAID HOLIDAYS:

New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day; provided that the worker works any of the three days in the five-day work week preceding the holiday and the first work day after the holiday.

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CARP0715-007 11/01/2017

	Rates	Fringes
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Millwright.....	\$ 48.01	58%+0.15
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Work of erection and dismantling of elevators and towers, such as concrete conveyors and temporary material elevators, scaffolding or other structures to be used as scaffolding inside or outside of buildings: the first sixty feet at the regular rate, 10% per hour additional for each additional fifty feet thereafter.

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ELEC0269-017 10/01/2017

BURLINGTON COUNTY (north of a line following the west and south limits of Burlington Borough from the Delaware River, in a southeasterly direction, to the Burlington - Mt. Holly road; then, south-southeast along the Burlington - Mt. Holly road to the town of Mt. Holly, includes Mt. Holly; then, east along the Pennsylvania Railroad to the town of New Lisbon, includes New Lisbon; then, continuing along the Pennsylvania Railroad to the Ocean County line)

	Rates	Fringes
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Electrician and cable splicer (Includes Low Voltage Wiring)....	\$ 49.79	61.48%
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ELEC0351-001 10/02/2017

ATLANTIC COUNTY; BURLINGTON COUNTY (south of a line following the west and south limits of Burlington Borough from the Delaware River, in a southeasterly direction, to the Burlington - Mt. Holly road; then, south-southeast along the Burlington - Mt. Holly road to the town of Mt. Holly, does not include Mt.

Holly; then, east along the Pennsylvania Railroad to the town of New Lisbon, does not include New Lisbon; then, continuing along the Pennsylvania Railroad to the Ocean County line); CAMDEN, CAPE MAY, CUMBERLAND, GLOUCESTER AND SALEM COUNTIES:

	Rates	Fringes
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## Electricians:

Cable splicer on lead cable.	\$ 46.51	72.54% + .65
Electrician and cable splicer.....	\$ 46.55	77.03%+0.65



ELEV0005-004 01/01/2018

	Rates	Fringes
Elevator mechanic.....	\$ 55.76	32.65

**PAID HOLIDAYS:**

New Year's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the Friday after Thanksgiving Day, and Christmas Day.

**PAID VACATION:**

Employer contributes 2% of basic hourly rate as vacation pay credit for 6 months to 5 years of service, and 4% for 5 years or more of service.

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ENGI0825-020 01/01/2018

	Rates	Fringes
Power equipment operators:		
GROUP 1.....	\$ 47.70	30.30
GROUP 2.....	\$ 46.05	30.30
GROUP 3.....	\$ 43.91	30.30
GROUP 4.....	\$ 42.41	30.30
GROUP 5.....	\$ 40.69	30.30

**Hazardous waste removal work:**

Work on a state or federally designated hazardous waste site, where the worker is in direct contact with hazardous material, and when personal protective equipment is required for respiratory, skin and eye protection: 20% per hour additional.

**PAID HOLIDAYS:**

New Year's Day, Washington's Birthday observed, Memorial Day, Independence Day, Labor Day, Presidential Election Day, Veteran's Day, Thanksgiving Day and Christmas Day; provided 1) that the worker works three of the preceding five work days before the holiday; or, the work day before the holiday and the work day after the holiday; and, 2) that the worker works the work day before and the work day after the holiday.

**DEFINITION OF GROUPS:****GROUP 1:**

Backhoe, Including Backhoe Track; Boom; Concrete Paving Machine; Crane (all types, including overhead and straddle traveling type); Drill (down-the-hole drill, rotary drill, self-propelled hydraulic drill, self-powered drill);

Elevating Grader; Excavator; Front End Loader (5 cu. yd. and over); Piledriver (length of boom, including length of leads, shall determine premium rate applicable); Trencher

GROUP 2:

Backhoe Loader Combo; Concrete Pumper; Grader/Blade (Finish); Hoist; Hydraulic Crane, 10 Tons and under; Front End Loader (2 cu. yd. but less than 5 cu. yd.); Scraper; Side Boom

GROUP 3:

Asphalt Spreader; Bulldozer; Compressor (2 or 3) (in Battery) (within 100 ft.); Forklift; Front End Loader (1 cu. yd. and over but less than 2 cu. yd.); Lull; Mechanic; Paver, Asphalt; Roller, Blacktop; Tractor;

GROUP 4:

Bobcat/Skid Loader; Compressor (Single); Farm Tractor; Front End Loader (under 1 cu. yd.); Hydroseeder; Roller, Grade; Pump, Hydraulic

GROUP 5:

Oiler

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IRON0068-011 07/01/2016

(Lumberton)

	Rates	Fringes
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IRONWORKER

Reinforcing.....	\$ 44.55	20.88
Structural and Ornamental...	\$ 46.54	20.88

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IRON0350-009 07/01/2016

BURLINGTON COUNTY (south and east of a line starting from the point on the Atlantic-Burlington county line where the Atlantic-Burlington county line crosses Route 206; then, following a line northeast through Wharton State Park to the town of Chatsworth; then, continuing along the same line, to the Burlington-Ocean county line)

	Rates	Fringes
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Ironworkers:

Reinforcing.....	\$ 47.02	37.75
Structural and Ornamental...	\$ 48.02	37.75

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IRON0399-005 07/01/2015

BURLINGTON COUNTY (north and west of a line starting from the point on the Atlantic-Burlington county line where the Atlantic-Burlington county line crosses Route 206; then, following a line northeast through Wharton State Park to the town of Chatsworth; then, continuing along the same line, to the Burlington-Ocean county line)

	Rates	Fringes
IRONWORKER (Structural, Reinforcing and Ornamental).....	\$ 44.60	27.25

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LABO0008-001 05/01/2011

	Rates	Fringes
Asbestos Removal Laborer.....	\$ 28.37	21.62

The removal, abatement, enclosure and decontamination of personal protective equipment, chemical protective clothing and machinery relating to asbestos and/or toxic and hazardous waste or materials which shall include but not necessarily be limited to: the erection, moving, servicing and dismantling of all enclosures, scaffolding and barricades; the operation of all tools and equipment normally used in the removal or abatement of asbestos and toxic or hazardous waste or materials; the labeling, bagging, cartoning, crating, or other packaging of materials for disposal; the clean-up of the worksite; and all other work incidental to the removal, abatement, encapsulation, enclosure, and decontamination of asbestos and toxic or hazardous waste or materials; and, in addition, all work tasks involved in the maintenance and operation of energy resource recovery plants (co-generation plants)

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LABO0222-006 07/01/2012

	Rates	Fringes
LABORER MASON TENDER: Brick/Cement/Concrete.....	\$ 29.85	23.07

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LABO0222-008 07/01/2012

	Rates	Fringes
Laborers: Asphalt Shoveler, Asphalt Spreader, Landscape Laborer, Pipelayer, Power Toole Operator and Screedman.....	\$ 29.35	23.07

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PAIN0021-032 05/01/2017

BURLINGTON COUNTY (south of a line drawn between these cities:  
Florence to Bustleton to Columbus to Jobstown to Pemberton to Onga Hat to Chatsworth to Whiting to Pinewald to Ocean Gate to Seaside Heights)

	Rates	Fringes
Glazier.....	\$ 41.30	31.15

Work at 30 ft. above the working surface, or on a swing stage: \$1.00 per hour additional.

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PAIN0711-011 05/01/2017

BURLINGTON COUNTY (north of a line drawn between these cities:  
Florence to Bustleton to Columbus to Jobstown to Pemberton to Onga Hat to Chatsworth to Whiting to Pinewald to Ocean Gate to Seaside Heights)

	Rates	Fringes
Glazier.....	\$ 44.81	23.16

Work welding or using a cutting torch: \$1.00 per hour additional.

Work on a swing stage scaffold; on a pipe scaffold providing the working height of the platform is 30 ft. or above; and on motorized lifts provided that the height of the lift platform is above the second floor or above thirty feet: \$1.00 per hour additional.

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PAIN0711-018 05/01/2017

	Rates	Fringes
DRYWALL FINISHER/TAPER.....	\$ 39.50	23.20

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PAIN0711-019 05/01/2017

	Rates	Fringes
PAINTER (Brush & Roller).....	\$ 39.25	22.66
PAINTER (Spray).....	\$ 40.28	19.98

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PLAS0592-036 05/01/2016

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 40.02	31.77

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PLUM0009-015 03/01/2017

BURLINGTON COUNTY (north of a line drawn from the town of Burlington City, includes Burlington City; then, along County Road Route 541 East, also known as High St., until it reaches the city of Mt. Holly, includes the city of Mt. Holly; then, along Madison Ave. in Mt. Holly to State Road Route 38 East; then, along State Road Route 38 East until it crosses over State Road Route 206 and becomes County Road Route 530; then, along County Road

Route 530 to Magnolia Road, includes Pemberton Borough; then, south on Magnolia Road in Pemberton Township to Magnolia New Lisbon Road (Route 545); then, south on Mt. Holly Misery Road to State Road Route 70 East; then, along State Road Route 70 East to the Ocean County line)

	Rates	Fringes
PIPEFITTER (Including HVAC		
Pipe Installation).....\$ 47.47		35.51
Service and Repair.....\$ 37.48		21.08
PLUMBER (Excluding HVAC Pipe		
Installation).....\$ 47.47		35.51
Service and Repair.....\$ 37.48		21.08
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PLUM0322-008 05/01/2016		

BURLINGTON COUNTY (south of a line drawn from the town of Burlington City, does not include Burlington City; then, along County Road Route 541 East, also known as High St., until it reaches the city of Mt. Holly, does not include the city of Mt.

Holly; then, along Madison Ave. in Mt. Holly to State Road Route 38 East; then, along State Road Route 38 East until it crosses over State Road Route 206 and becomes County Road Route 530, does not include Pemberton Borough; then, south on Magnolia Road in Pemberton Township to Magnolia New Lisbon Road (Route 545); then, south on Mt. Holly Misery Rd. to State Road Route 70 East; then, along State Road Route 70 East to the Ocean County line)

	Rates	Fringes
PIPEFITTER (Including HVAC		
Pipe Installation).....\$ 44.42		36.34
PLUMBER (Excluding HVAC Pipe		
Installation).....\$ 44.42		36.34
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ROOF0030-027 05/01/2017		

	Rates	Fringes
Roofer		
SHINGLES.....\$ 36.15		29.76
SLATE AND TILE.....\$ 36.15		29.76
ALL OTHER WORK.....\$ 36.15		29.76

Mopper, and operator of felt-laying machine: \$.50 per hour additional.

Work applying roofing material, on any new construction job, on those days on which a felt-laying machine or slag dispensing machine is used: \$.50 per hour additional.

#### PAID HOLIDAY:

The last working day before Christmas, to be paid at the rate of four hours pay.

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SFNJ0669-006 04/01/2017

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 49.15	23.08

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\* SFNJ0692-002 01/01/2018

Within 15 miles beyond the city limits of Philadelphia.

	Rates	Fringes
Sprinkler fitter (Fire Sprinklers).....	\$ 53.60	26.27

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SHEE0027-009 06/01/2012

	Rates	Fringes
SHEET METAL WORKER (Including HVAC Duct Installation).....	\$ 43.08	32.52

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TEAM0469-003 11/01/2017

BURLINGTON COUNTY (east of a line drawn from the New Jersey Turnpike to the Delaware River)

	Rates	Fringes
Truck drivers:		
Dump Truck.....	\$ 39.90	31.385
Off the Road Truck.....	\$ 40.05	31.385

Hazardous waste removal work:

Work on a state or federally designated hazardous waste site, where the worker is in direct contact with hazardous material, and when personal protective equipment is required for respiratory, skin and eye protection: \$3.00 per hour additional.

Work on a state or federally designated hazardous waste site, in a zone requiring Level A personal protection for any workers other than the truck driver: \$3.00 per hour additional.

Work on a state or federally designated hazardous waste site where the worker is not working in a zone requiring Level A, B or C personal protection: \$1.00 per hour additional.

PAID HOLIDAYS:

New Year's Day, President's Day, Decoration Day, Independence Day, Labor Day, Presidential Election Day, Veteran's Day, Thanksgiving Day and Christmas Day.

**VACATION PAY CREDIT:**

Workers working or receiving pay for 80 days within a year receive one week paid vacation (48 hours); 125 days receive two weeks paid vacation (96 hours); 145 days receive 15 days paid vacation (120 hours); 15 years seniority and 145 days receive 4 weeks paid vacation (160 hours).

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TEAM0676-002 05/01/2017

BURLINGTON COUNTY (west of a line drawn from the New Jersey Turnpike to the Delaware River)

	Rates	Fringes
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**Truck drivers:**

Dump Truck Drivers.....	\$ 34.20	25.485
Off the Road Truck.....	\$ 34.55	25.485

**Hazardous waste removal work:**

Work on a state or federally designated hazardous waste site, where the worker is in direct contact with hazardous materials, and when personal protective equipment is required for respiratory, skin and eye protection: \$3.00 per hour additional.

Work on a state or federally designated hazardous waste site, where personal protection A, B, C or D is NOT required: \$1.00 per hour additional.

**SHIFT WORK:**

An owner mandated irregular shift starting any time other than between 6:00 am and 8:00 am to receive \$1.00 per hour, for each hour worked, in addition to the regular rate of pay.

**PAID HOLIDAYS:**

New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Presidential Election Day, Veteran's Day (or the day after Thanksgiving, at the option of the contractor), Thanksgiving Day, the afternoon of the day before Christmas (Dec. 24) provided that the worker works in the morning, and Christmas Day, provided that the worker works or is available for work on at least two days in the week in which the holiday occurs.

**BEREAVEMENT PAY:**

In case of a death in the worker's immediate family (mother, father, wife, husband, children, brother, sister, current mother-in-law, current father-in-law, grandparents), the worker shall be allowed leave not to exceed three (3) days straight-time pay, provided that he or she shall receive no pay unless the day of death and the burial day falls on a

regular work day, and not on days off, holidays, vacation, Saturdays or Sundays.

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SUNJ2004-003 01/02/2009

	Rates	Fringes
LABORER: Common or General.....	\$ 19.27	12.42
PLASTERER.....	\$ 42.33	0.00

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey.

Example:

PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers



Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION