

**State of Hawaii**  
**DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM**  
**Honolulu, Hawaii**

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**AGRIBUSINESS DEVELOPMENT CORPORATION**

**IFB-26-200-008**

**CONTRACT SPECIFICATIONS**

**Site Safety and Health Officer for  
Operation and Maintenance Work Under  
Navy Contract at the Pacific Missile Range Facility  
Kekaha, Kauai, Hawaii**

**June 2026**

**BIDS DUE BEFORE 2:00 P.M.**  
**July 23, 2026**

**Via HiePRO**  
**(Hawaii e-Procurement System)**

**IFB-26-200-008**  
**CONTENTS**

NOTICE TO OFFERORS	iii
OFFER FORM	OF-1 to OF-12
SPECIFICATIONS	S-1 to S-4
SPECIAL PROVISIONS	SP-1 to SP-57
ATTACHMENT A – Management and Administration	
ATTACHMENT B – Facility Investment	
ATTACHMENT C – Location Maps	
ATTACHMENT D – Accident Prevention Plan/Activity Hazard Analysis (draft)	
ATTACHMENT E – ADC Quality Control Plan (draft)	
ATTACHMENT F – Acronyms	
ATTACHMENT G – Wage Determination and General Decision Hawaii	
ATTACHMENT H – Facilities Canals Historical	
ATTACHMENT I – Cathodic Protection O&M Data	
General Conditions (AG-008, Revised 1/10/2023)	

**NOTICE TO OFFERORS**  
**(Chapter 103D, HRS)**  
**IFB-26-200-008**

COMPETITIVE BIDS for a Site Safety and Health Officer for Operation and Maintenance Work Under a Navy Contract at the Pacific Missile Range Facility, Kekaha, Kauai, Hawaii shall be submitted to the Agribusiness Development Corporation (ADC) through the Hawaii e-Procurement System (HiePRO) on or before July 23, 2026 at 2:00 p.m. HiePRO is accessible through the State Procurement Office website at [www.spo.hawaii.gov](http://www.spo.hawaii.gov).

The State of Hawaii General Conditions revised January 10, 2023 shall be made a part of the contract awarded.

The project site is situated on the island of Kauai at and adjacent to the Pacific Missile Range Facility (PMRF) in Kekaha. The scope of work includes conducting monthly safety inspections and reporting of operation and maintenance work being performed under a contract for U.S. Navy Solicitation No. N62478-26-T-2424. Qualified Bidders shall have completed five (5) years of satisfactory experience in preparing and enforcing the safety program on contracts of similar size and complexity in the past, and have completed the 30-hr OSHA construction safety class or equivalent within the last five (5) years, prior to the scheduled contract start date, and an average of at least 24 hours of formal safety training per year for the past five (5) years. Proof of qualification is required and shall be uploaded onto HiePRO. Bids that do not show qualifications may be disqualified and not considered for award.

Bidders are hereby notified that this scope of service will be sub-contracted by the ADC under a contract between the U.S. Navy and ADC for Solicitation N62478-26-T-2424. ADC shall comply with 1) all applicable Federal Acquisition Regulations (FAR), including Utilization of Small Business Concerns, 52.219-8; 2) Equal Employment Opportunity Regulations, Executive Order 11246, as amended; and 3) the rules, regulations, and orders of the Secretary of Labor. The Bidder shall develop and maintain a Safety Program that complies with the U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1 and Public Law 91-596, Occupational Safety and Health Act. Furthermore, payment for services under this contract is subject to availability of federal funds.

The Contractor shall ensure that all security/entrance clearances are obtained. The Contractor shall obtain all required corporate and personnel Security Clearances prior to commencement of work.

Contract award is subject to the availability of funding. **Bidders are hereby notified that upon full execution of a contract, the Site Safety and Health Officer for Operation and Maintenance Work Under a Navy Contract at the Pacific Missile Range Facility is scheduled to commence on the Notice to Proceed for one calendar year with the option to extend for up to four consecutive years.**

Should there be any questions, please call Allston Pleus at (808) 215-1358 or email [dbedt.adc@hawaii.gov](mailto:dbedt.adc@hawaii.gov).

**Site Safety and Health Officer For Operation and Maintenance Work  
Under Navy Contract At Pacific Missile Range Facility  
Kekaha, Kauai, Hawaii**

IFB-26-200-008

Procurement Officer  
Agribusiness Development Corporation  
235 South Beretania St., Rm 205  
Honolulu, Hawaii 96813

Dear Sir:

The undersigned has carefully read and understands the terms and conditions of the Specifications and Special Conditions specified in the Invitation for Bids attached hereto, and in the General Conditions (AG-008 January 10, 2023), which by reference is made a part hereof and attached hereto, and submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof.

The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Date: \_\_\_\_\_

Respectfully submitted:

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Email address: \_\_\_\_\_

\_\_\_\_\_  
\*Exact Legal Name of Offeror (Company Name)

\_\_\_\_\_  
Authorized Signature

Payment address, if other than street  
Address at right:

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address (Not P. O. Box)

\_\_\_\_\_  
City, State, Zip Code

Hawaii General Excise Tax License I.D. No. \_\_\_\_\_

Social Security or Federal I. D. No. \_\_\_\_\_

\*If Offeror shown above is a "D.B.A." or a "division" of a corporation, furnish the exact legal name of the corporation under which the contract, if awarded, will be executed:

Offeror is: \_\_\_ Individual \_\_\_ Partnership \_\_\_ Corporation \_\_\_ Joint Venture

State of Incorporation: Hawaii \_\_\_\_\_ \*\*Other \_\_\_\_\_

\*\* If "Other", is corporate seal available in Hawaii? \_\_\_ Yes \_\_\_ No

:  
**The following is the Bid for Site Safety and Health Officer for Operation and Maintenance Work Under a Navy Contract at the Pacific Missile Range Facility, Kekaha, Kauai, Hawaii, IFB-26-200-008.**

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**I. Update and Revision of Accident Prevention Plan and Activity Hazard Analysis (Per Specifications, Attachment A, Spec Items 2.9.2, 2.9.4, 2.9.4.3, and 2.9.4.5).**

A. Labor, Materials, Supplies and Equipment (Lump Sum) Total I.A. \$ \_\_\_\_\_

**II. For Base Period: Notice to Proceed Date to July 31, 2027**

A. Pre-Performance Site Visit with O&M Contractor (include travel expense to Kauai) (Lump Sum) Total II.A. \$ \_\_\_\_\_

B. O & M Inspections as described in Specifications, Attachment A, **Spec Items 2.3.3.3, 2.7.1.3, 2.9, 2.9.10, 2.9.11, 2.9.12, 2.10.2.**

	Per inspection	No. of Inspections	Total
O & M Inspection	\$ _____	12	\$ _____
Air and ground Transportation	\$ _____	12	\$ _____
Other (Describe) _____			\$ _____
		Total II.B.	\$ _____
<b>SUBTOTAL Items I.A, II.A, II.B.</b>			<b>\$ _____</b>

(this section intentionally left blank)

- C. Additional Safety Work as described in Specifications, Attachment A, **Spec Items 2.9.6, 2.9.6.1**, including conducting Safety-related work for additional Operations and Maintenance and/or Dredging work as requested by the ADC. All Additional Safety Work shall be approved by ADC and shall not exceed the rates proposed below, shall be submitted under a separate proposal and shall be executed by a supplemental contract. Detailed Invoices for additional work are required per occurrence.

	Describe	Per hour
Personnel	_____	\$ _____
	_____	\$ _____

Per round trip (Air and ground transportation if needed).

\$ \_\_\_\_\_

Other (Describe)

_____	\$ _____
_____	\$ _____

**(Item II C is for evaluation purposes)**

**III. For Option Year 1: August 1, 2027 to July 31, 2028**

- A. O & M Inspections as described in Specifications, Attachment A, **Spec Items 2.3.3.3, 2.7.1.3, 2.9, 2.9.10, 2.9.11, 2.9.12, 2.10.2.**

	Per inspection	No. of Inspections	Total
O & M Inspection	\$ _____	12	\$ _____
Air and ground Transportation	\$ _____	12	\$ _____
Other (Describe) _____			\$ _____
		Total II.B.	\$ _____
<b>SUBTOTAL Item III.A</b>			<b>\$ _____</b>

- B. Additional Safety Work as described in Specifications, Attachment A, **Spec Items 2.9.6, 2.9.6.1**, including conducting Safety-related work for additional Operations and Maintenance and/or Dredging work as requested by the ADC. All Additional Safety Work shall be approved by ADC and shall not exceed the rates proposed below, shall be submitted under a separate proposal and shall be executed by a supplemental contract. Detailed Invoices for additional work are required per occurrence.

	Describe	Per hour
Personnel	_____	\$ _____
	_____	\$ _____
Per round trip (Air and ground transportation if needed).		
		\$ _____
Other (Describe)		
	_____	\$ _____
	_____	\$ _____

**(Item III.B is for evaluation purposes)**

**IV. For Option Year 2: August 1, 2028 to July 31, 2029**

- A. O & M Inspections as described in Specifications, Attachment A, **Spec Items 2.3.3.3, 2.7.1.3, 2.9, 2.9.10, 2.9.11, 2.9.12, 2.10.2.**

	Per inspection	No. of Inspections	Total
O & M Inspection	\$ _____	12	\$ _____
Air and ground Transportation	\$ _____	12	\$ _____
Other (Describe) _____			\$ _____
		Total II.B.	\$ _____
<b>SUBTOTAL Item IV.A</b>			\$ _____

- B. Additional Safety Work as described in Specifications, Attachment A, **Spec Items 2.9.6, 2.9.6.1**, including conducting Safety-related work for additional Operations and Maintenance and/or Dredging work as requested by the ADC. All Additional Safety Work shall be approved by ADC and shall not exceed the rates proposed below, shall be

submitted under a separate proposal and shall be executed by a supplemental contract. Detailed Invoices for additional work are required per occurrence.

	Describe	Per hour
Personnel	_____	\$ _____
	_____	\$ _____

Per round trip (Air and ground transportation if needed).

\$ \_\_\_\_\_

Other (Describe)

_____	\$ _____
_____	\$ _____

**(Item IV.B is for evaluation purposes)**

**V. For Option Year 3: August 1, 2029 to July 31, 2030**

A. O & M Inspections as described in Specifications, Attachment A, **Spec Items 2.3.3.3, 2.7.1.3, 2.9, 2.9.10, 2.9.11, 2.9.12, 2.10.2.**

	Per inspection	No. of Inspections	Total
O & M Inspection	\$ _____	12	\$ _____
Air and ground Transportation	\$ _____	12	\$ _____
Other (Describe) _____			\$ _____
		Total II.B.	\$ _____
<b>SUBTOTAL Item V.A</b>			\$ _____

B. Additional Safety Work as described in Specifications, Attachment A, **Spec Items 2.9.6, 2.9.6.1**, including conducting Safety-related work for additional Operations and Maintenance and/or Dredging work as requested by the ADC. All Additional Safety Work shall be approved by ADC and shall not exceed the rates proposed below, shall be submitted under a separate proposal and shall be executed by a supplemental contract. Detailed Invoices for additional work are required per occurrence.

	Describe	Per hour
Personnel	_____	\$ _____

\_\_\_\_\_ \$ \_\_\_\_\_

Per round trip (Air and ground transportation if needed).

\$ \_\_\_\_\_

Other (Describe)

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

**(Item V.B. is for evaluation purposes)**

**VI. For Option Year 4: August 1, 2030 to July 31, 2031**

A. A. O & M Inspections as described in Specifications, Attachment A, **Spec Items 2.3.3.3, 2.7.1.3, 2.9, 2.9.10, 2.9.11, 2.9.12, 2.10.2.**

	Per inspection	No. of Inspections	Total
O & M Inspection	\$ _____	12	\$ _____
Air and ground Transportation	\$ _____	12	\$ _____
Other (Describe) _____			\$ _____
		Total II.B.	\$ _____
<b>SUBTOTAL Item VI.A</b>			\$ _____

B. Additional Safety Work as described in Specifications, Attachment A, **Spec Items 2.9.6, 2.9.6.1**, including conducting Safety-related work for additional Operations and Maintenance and/or Dredging work as requested by the ADC. All Additional Safety Work shall be approved by ADC and shall not exceed the rates proposed below, shall be submitted under a separate proposal and shall be executed by a supplemental contract. Detailed Invoices for additional work are required per occurrence.

	Describe	Per hour
Personnel	_____	\$ _____
	_____	\$ _____

Per round trip (Air and ground transportation if needed).

\$ \_\_\_\_\_

Other (Describe)

\_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

**(Item VI.B. is for evaluation purposes)**

**TOTAL SUM BID AMOUNT (I.A., II.A., II.B., III.A., IV.A., V.A., VI.A):** \$ \_\_\_\_\_

(Award shall be based on this TOTAL SUM BID PRICE; however, award of the contract will be given for the **Base Year** only, with the option to extend for up to four consecutive years (Option Years One to Four). See Award of Contract on page SP-5.

**OFFEROR** \_\_\_\_\_

**COMPANY NAME** \_\_\_\_\_

**OFFERER SHALL COMPLETE THE FOLLOWING:**

Contact person for matters concerning this contract:

(a) Name and Telephone No. \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Alternate contact person in case of emergency or after hours, weekends, and holidays (shall not be same person as above):

(b) Name and Telephone No. \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**Service Personnel:**

List personnel, currently employed by Bidder, who will provide SSHO services as specified herein. **Upload copies of applicable certifications via HlePRO.**

(a) Name \_\_\_\_\_ Years of Experience: \_\_\_\_\_

Certifications: \_\_\_\_\_

\_\_\_\_\_ Copy of certification attached? \_\_\_\_\_

(b) Name \_\_\_\_\_ Years of Experience: \_\_\_\_\_

Certifications: \_\_\_\_\_

\_\_\_\_\_ Copy of certification attached? \_\_\_\_\_

**Insurance**

	<u>Carrier</u>	<u>Policy No.</u>	<u>Agent</u>
Commercial General Liability	_____	_____	_____
Worker's Compensation	_____	_____	_____

Temporary Disability \_\_\_\_\_

Unemployment Insurance: State of Hawaii Labor No. \_\_\_\_\_

**References**

List two (2) companies or government agencies for whom Bidder has provided or is currently providing Site Safety and Health Officer-related services as specified herein. (Name, address, contact person, telephone number, facsimile number and e-mail address):

---

Company Address

---

Date of performance

---

Contact Person Telephone no. Fax no. Email

---

Company Address

---

Date of performance

**[Remainder of page intentionally left blank]**

## SMALL BUSINESS CONCERN

Bidders who qualify as a Small Business shall be certified by the U.S. Small Business Administration as a Small Business. Since October 2008, small businesses can self-represent their status as a small disadvantaged business (SDB). You do not have to submit an application to SPA for SDB status.

For SBA eligibility criteria for SDBs, go to <http://www.sba.gov/content/disadvantaged-businesses>. To self-represent as an SDB, Bidder shall register its business in the System for Award Management.

Bidder represents as part of its offer that:

It is not a small business concern because the contract it is submitting this bid for is for a total price of under \$500,000 or under \$1,000,000 if this is a construction contract.

If Bidder represents as part of its offer that it is a small business concern, please complete the following and refer to FAR 52-219-9. For further information or questions about these representations, please call ADC at (808) 586-0186.

The Bidder represents that it  is  is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

The Bidder represents as part of its offer that it  is  is not a women-owned small business concern.

The Bidder represents as part of its offer that it  is  is not a veteran-owned small business concern.

The Bidder represents as part of its offer that it  is  is not a service-disabled veteran-owned small business concern.

The Bidder represents, as part of its offer, that it  is  is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and it  is  is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation above of this provision is accurate of the HUBZone small business concern or concerns that are participating in the joint venture. Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

**OFFEROR** \_\_\_\_\_

**COMPANY NAME** \_\_\_\_\_

9/19/00

**WAGE CERTIFICATE  
FOR SERVICE CONTRACTS**  
(See Special Provisions)

Subject: IFB No.: IFB-26-200-008

Title of IFB: Site Safety and Health Officer for Operation and  
Maintenance Work Under Navy Contract at Pacific Missile  
Range Facility  
Kekaha, Kauai, Hawaii

Agribusiness Development Corporation

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS), I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and
2. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wage required by section 103-55, HRS.

Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

WAGE CERTIFICATE

9/20/00

**TAX EQUALIZATION CERTIFICATE**

(See Special Provisions)

Subject: IFB No.: IFB-26-200-008

Title of IFB: Site Safety and Health Officer for Operation and Maintenance Work  
Under Navy Contract at Pacific Missile Range Facility  
Kekaha, Kauai, Hawaii

(To be filled in by prospective Offeror)

Out-of-state Offerors not possessing a Hawaii General Excise Tax (hereinafter "GET") license must answer all questions:

Yes No  
(check only one)

1. Does your business have an office, inventory, property, employees, or other representation in the State of Hawaii (hereinafter "SOH")?              

2. Does the contract to be awarded require your business to have an office, inventory, property, employees, or other representation in the SOH?              

3. Does your business provide services in conjunction with the sales of property, such as training, installation, or repairs in the SOH?              

4. Will your business provide any services in the SOH under the contract to be awarded?              \*

\*If the entire services are to be subcontracted, subject to the State's approval, provide the names of the subcontractor(s):

\_\_\_\_\_

If you answered "Yes" to any question, then you have sufficient presence in the State and are advised that the gross receipts derived from this solicitation are subject to the GET imposed by Chapter 237, Hawaii Revised Statutes (hereinafter "HRS"), at the current 4% rate, and where applicable to tangible property imported into the SOH for resale, subject to the current 1/2% use tax imposed by Chapter 238, HRS.

If you answered "No" to all questions, then the taxpayer preference provision described in Section 103-1008, HRS, applies to you.

Offeror \_\_\_\_\_  
Signature \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

TAX EQUALIZATION CERTIFICATE

**SPECIFICATIONS**  
**Site Safety and Health Officer for**  
**Operation and Maintenance Work**  
**Under Navy Contract at**  
**Pacific Missile Range Facility**  
**Kekaha, Kauai, Hawaii**

**I. SCOPE OF WORK**

Pursuant to a contract issued by Naval Facilities Engineering Command Hawaii (NAVFAC) for Solicitation No. N62478-26-T-2424 (Navy Contract), a Site Safety and Health Officer (SSHO), under a subcontract with Agribusiness Development Corporation (ADC), shall perform safety and occupational health management and enforcement services for operation and maintenance work of drainage canals and pumps (O&M Work) that is subcontracted by the ADC at the Pacific Missile Range Facility (PMRF) in Kekaha on the island of Kauai. **Attachment A** – 0200000-Management and Administration - describes the overall specifications that the ADC shall perform under the Navy Contract, including specific tasks that the SSHO shall perform (See Spec Items 2.9.8, 2.9.9) The scope of work also includes updating and revising the existing Accident Prevention Plan (APP), updating or developing Accident Hazard Analysis (AHA), (See Spec Items 2.9.4, 2.9.4.3, 2.9.4.5) performing accident investigations as needed (See Spec Item 2.9.6), completing contractor incident reports (See Spec Item 2.9.6.1), and conducting pre-performance safety meeting with the O&M Work contractor and/or dredging contractor.

The three pumps at Kawaieie with associated canals, flood gate and flap gates are located on lands adjacent to and within PMRF. See Kekaha Map (**Attachment C**) for general location. **Attachment B** - 1502000 – Facility Investment Table of Content – describes the infrastructure covered by the Navy Contract.

The U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, 3 November 2003, shall be adhered to, as it applies to the Navy Contract. The specifications and frequency of the O&M Work for which the SSHO will provide safety management is described below.

The SSHO shall be responsible for regular inspections of work areas, job sites and work crews who are performing work for ADC under the Navy Contract, to ensure that their operations are being conducted safely. The safety inspections shall ensure that:

1. the site is safe and free of job-site hazards,
2. workers are wearing or utilizing proper Personal Protective Equipment (PPE),
3. safe work practices and processes are being followed,
4. workers are familiar with the hazards covered for that work activity (per Activity Hazard Analysis (AHA), per **Attachment A, Spec Item 2.9.3**), and
5. all equipment and tools are in good condition and being used safely.

The SSHO assures that ADC's contractors who perform O&M Work shall work in a safe manner and comply with all applicable safety regulations.

In general, the NAVFAC approach will be to conduct Performance Assessment on the quality and effectiveness of the ADC's safety program. The SSHO acknowledges that the ADC

shall be subject to safety inspections of its work sites by NAVFAC, and that safety records shall be available to the Contracting Officer of the Navy Contract. The SSHO further acknowledges that NAVFAC reserves the right to inspect and monitor Contractor operations for safety compliance' and reserves the right to stop any work activity that it deems to be unsafe.

The SSHO shall perform items 1 to 5 above, as needed and applicable, and as approved by the ADC, during major pump repair work and during rain recovery work or weather occurrences that may cause flooding at PMRF (Additional Safety-related Work).

The Specifications related to performance of Safety management described in **(Attachment A)**, are hereby made a part of the Scope of Work and shall supersede the scope of work described above in case of discrepancies.

## II. SPECIFICATIONS

### I. Accident Prevention Plan and Activity Hazard Analysis

A. The attached draft Accident Prevention Plan (APP) and Activity Hazard Analysis (AHA) are made a part of these Specifications. (See **Attachment D**). The SSHO shall revise the APP to be submitted for approval by the NAVFAC's Contracting Officer.

1. The SSHO shall implement and enforce its rules and regulations. The SSHO shall use appropriate report forms provided in the APP and AHA.
2. The SSHO shall revise or develop activity-specific AHA's as requested by the ADC. It is anticipated that one or two revisions will be requested on average, per year.
3. The SSHO shall revise the APP as needed.

### II. Pre-performance Site Visit and Monthly Inspections

A. The ADC will hold a with a Pre-performance site visit with the contractor who is will perform the O&M work. The SSHO will assist with preparing for and facilitating the safety management portion of the meeting.

B. The SSHO shall conduct a minimum of one surveillance or inspection per month of the O&M Work (O&M Inspection). The O&M Inspection shall include:

1. Conduct safety and health inspections of the work sites primarily the Kawaiele pump station, flood gate, and flap gates and maintain a written log that includes the area/operation inspected, date of inspection, identified hazards, recommended corrective actions, and estimated and actual dates of corrections. Photo-documentation is also required. Safety inspection logs shall be submitted to ADC within seventy two (72) hours of the inspection;

2. Lead and conduct monthly safety meetings with O&M Contractor and document such meetings by completing and signing the "Daily Health and Safety Tailgate Meeting Form". Submit the form to ADC monthly within seventy two (72) hours of the inspection date;
3. Follow-up with the O&M Contractor to ensure that corrective actions are taken. The SSHO shall inform the ADC of the O&M Contractor's failure to take recommended corrective actions; and
4. Submit inspection reports with photo documentation to ADC within seventy two (72) hours of the inspection date.

C. Additional Safety-related Work. The SSHO shall perform the following additional duties as needed and approved by ADC, including but not limited to:

1. Attend pre-performance meetings with ADC contractors and performance meetings with the Navy to present and facilitate the safety-related portion of the agenda.
2. Attend kick-off meetings held by ADC contractors prior to mobilization of major repair work or other hazardous tasks to review safety practices and procedures.
3. Inspect and monitor contractors' and sub-contractors' safety practices during as-needed repairs that have been approved by ADC.
4. In the event of heavy rain or severe weather occurrence, the SSHO shall perform additional safety and occupational health management-related duties, during and/or after the O&M Contractor's rain recovery-related work, (Additional Rain Recovery Work) as needed and approved by ADC. If the SSHO is unable to be present while the O&M Contractor performs the preparatory work activity, the SSHO shall conduct a safety review by phone with the O&M Contractor representative. Any Additional Rain Recovery Work shall be documented by the SSHO and signed by the SSHO and O&M Contractor.
5. Conduct mishap investigations and complete required reports and assist the ADC with completing forms such as the Contractor Significant Incident Report (CSIR) (Mishap Reporting).
6. The SSHO shall propose a rate quote for the Additional Rain Recovery Work and Mishap Reporting on the Offer Form.

D. Management and Administration (**Attachment A**) of the Navy Contract. The SSHO shall review and assist the ADC with implementation of Management and Administration as it applies to safety and occupational health management and enforcement services for the O&M Work and Additional Safety Work.

The SSHO acknowledges that Management and Administration requires Quality Assurance Management (QAM), and that the ADC will execute a contract for QAM services with a separate contractor. The ADC, QAM manager and SSHO will work in partnership with each other to assure ADC's overall successful performance under the Navy Contract. The draft QAM handbook is attached (**Attachment E**),

E. Modifications to Navy Contract. Should NAVFAC order modifications to the Navy Contract that in any way change the scope of work performed by the O&M Contractor, the SSHO shall accordingly modify his or her scope of work, as approved by the ADC. Payment for such modifications shall be at the applicable rates that are proposed for the year in which the tasks are performed. A supplemental contract for the modified scope of work shall be executed.

## SPECIAL PROVISIONS

### TERMS AND ACRONYMS USED HEREIN

Procurement Officer	=	The Chairperson for the Board of Agriculture
State	=	All agencies, including schools, participating in this agreement.
SPO	=	State Procurement Office of the State of Hawaii, located at 1151 Punchbowl Street, Room 416, Honolulu, Hawaii 96813, P.O. Box 119, Honolulu, Hawaii 96810-0119.
ADC	=	Agribusiness Development Corporation, located at 235 South Beretania Street, Room, 205, Honolulu, Hawaii 96813.
Bidder or Offeror	=	Any individual, partnership, firm, corporation, joint venture, or other entity submitting directly or through a duly authorized representative or agent, a bid for the good, service, or construction contemplated.
Kauai Property Manager	=	An ADC agent who is a resident of Kauai and is authorized to act as ADC's representative
CA	=	Contract Administrator
FAR	=	Federal Acquisition Regulations
GC	=	General Conditions (AG-008 103D, Revised January 10, 2023)
HRS	=	Hawaii Revised Statutes
HAR	=	Hawaii Administrative Rules
IFB	=	Invitation for Bids
RFP	=	Request for Proposals
GET	=	General Excise Tax
NAVFAC	=	Naval Facilities Engineering Command, Hawaii
PMRF	=	Pacific Missile Range Facility, Kekaha, Kauai, Hawaii

In addition, Definitions and Acronyms in **ATTACHMENT F** are used herein.

### CONTRACT ADMINISTRATOR

For the purpose of this contract, the ADC Contract Manager is designated as the Contract Specialist by the Executive Director of Agribusiness Development Corporation. The telephone number at which the Contract Specialist may be reached is (808) 215-1358 or general delivery email: [dbedt.adc@hawaii.gov](mailto:dbedt.adc@hawaii.gov). **Include "NAVFAC N62478-26-T-2424" in the email subject line.**

### TERM OF CONTRACT

Contractor shall enter into a contract for furnishing the site safety and health officer services commencing from the official start date specified on the Notice to Proceed and terminating on or before July 25, 2027 (Base Period).

Unless terminated as provided for in the State's General Conditions, and at ADC's sole option, the contract may be extended for four (4) consecutive twelve-month periods (Option Period) or parts thereof without rebidding, upon mutual agreement in writing at least sixty (60) days prior to each expiration, provided the supplemental contract price shall remain the same or lower than the initial bid price for the Option Period. The ADC may terminate any extended contract period at any time upon ninety (90) days prior written notice.

## **BIDDER QUALIFICATION**

In addition to meeting legal and other requirements of this IFB, Bidder shall meet the following qualification requirements to be considered for award:

1. The Bidder shall have completed five (5) years of satisfactory experience in preparing and enforcing the safety program on contracts of similar size and complexity in the past or three years' experience if he/she possesses a Certified Safety Professional (CSP) or safety and health degree. The Bidder shall have completed the 30-hr OSHA construction safety class or equivalent within the last five (5) years, and maintained competency through 24 hours of formal safety and health related coursework every four years.
2. Bidder shall complete on Offer Form, page OF-9 the information requested on who can be contacted by ADC on matters concerning this contract.
3. Bidder shall furnish a minimum of two (2) references for which bidder is either providing or has provided safety services within the past three years. The State reserves the right to contact these references to verify Bidder's work performance. Reference information shall be provided on the appropriate OFFER FORM page and shall include the contract names and numbers of the references.

## **TYPE OF CONTRACT**

The contract for the Scope of Services shall be a combination firm fixed, indefinite delivery indefinite quantity contract. The contract will be at a fixed rate for an indefinite amount of services to be furnished at specified times or as ordered during the time of performance. The total contract price shall constitute full and final compensation for furnishing all materials, equipment, management, supervision, labor, transportation, fuel, power, and all incidental items necessary to complete the work. Payment shall be made for completed services only.

## **CERTIFICATION OF INDEPENDENT COST DETERMINATION**

By submission of a bid in response to this IFB, Bidder certifies as follows:

1. The costs in this IFB have been arrived at independently, without consultation, communication, or agreement with any other bidder, as to any matter relating to such costs for the purpose of restricting competition.
2. Unless otherwise required by law, the costs which have been quoted in this IFB have not been knowingly disclosed by the bidder prior to award, directly or indirectly, to any other bidder or competitor prior to the award of the contract.
3. No other attempt has been made or will be made by the bidder to indicate any other person or firm to submit or not to submit for the purpose of restricting competition.

## **RESPONSIBILITY OF OFFERORS**

Bidder is advised that if awarded a contract under this solicitation, the Bidder shall, be required to be compliant with all laws governing entities doing business in the State including the following chapters and pursuant to HRS §103D-310(c):

1. **Chapter 237, tax clearance;**
2. **Chapter 383, unemployment insurance;**
3. **Chapter 386, workers' compensation;**
4. **Chapter 392, temporary disability insurance;**
5. **Chapter 393, prepaid health care; and**
6. **Chapter 103D-310(c), Certificate of Good Standing (COGS) for awards \$2,500 or greater.**

The State will verify compliance on Hawaii Compliance Express (HCE) for awards \$2,500 or greater.

The HCE is an electronic system that allows vendors, contractors and services providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation; Federal Internal Revenue Service; Department of Labor and Industrial Relations; and Department of Commerce and Consumer Affairs.

Vendors, contractors and service providers should register online with Hawaii Compliance Express (HCE) prior to submitting an offer at <http://vendors.ehawaii.gov>. The annual registration fee is \$12.00 payable to Hawaii Information Consortium, LLC (HIC).

If you have any questions, please call: Hawaii Information Consortium, LLC  
Phone no. 695-4620 or  
Email: [info@ehawaii.gov](mailto:info@ehawaii.gov).

The "Certificate of Vendor Compliance" is accepted for both contracting and final payment.

**Paper documents as proof of compliance are NOT ACCEPTABLE.** Offerors are advised that the following paper compliance documents will no longer be accepted:

Tax Clearance Form A-6;  
Certificate Of Compliance, DLIR Form LIR#27  
Certificate Of Good Standing, DCCA (BREG).

**Timely Submission of Compliance Document.** The "Certificate of Vendor Compliance" must be submitted to the ADC **within five (5) working days from the date the request is made.** If the certificate is not submitted on a timely basis, an otherwise responsive offer from a responsible Bidder may not receive the award.

**It is recommended that Bidders register with Hawaii Compliance Express (HCE) prior to responding to a solicitation to ensure timely submittal when requested. Bidders should be aware that it may take up to thirty (30) working days to establish a compliance status**

## SUBMISSION OF QUESTIONS

Interested Bidders shall submit their questions regarding this IFB on HiePRO before the deadline of **July 14, 2026, 4:00 p.m.** Questions submitted by email will be disregarded. Answers will be posted on HiePRO on **July 17, 2026, at 4:00 p.m.**

## **SUBMISSION OF OFFER**

Bids for this Solicitation, **IFB-26-200-008**, shall be submitted through HiePRO before the deadline of **July 23, 2026 at 2:00 p.m.** Offers received outside of HiePRO shall be rejected and not be considered for award. To register for HiePRO, go to <http://hiepro.hawaii.gov>. For assistance with this website, click on "Get Help" in the upper margin or call 808-695-4620.

Bidder's electronic response to this solicitation shall be deemed as an offer to provide the specified Site Safety and Health Officer to the State at the prices shown in the Offer Form for IFB-26-200-008 and under the terms and conditions of this solicitation.

Bidders must complete and upload the following onto HiePRO:

**Offer or Bid, signed;**

**Certificates of Completion of Safety Trainings**

**Wage Certificate, signed**

## **ADDENDA OR BULLETINS**

Any addendum or bulletin issued during the bidding period is part of the documents furnished to the bidder for the preparation of the Bid and shall be made a part of the Bid and the contract. **The Bidder is responsible to check the HiePRO solicitation for issuance of any addendum or bulletin for this project prior to submitting the bid.** Failure of any bidder to review any addendum or bulletin shall not relieve the bidder from any obligation under the bid as submitted.

## **BID PREPARATION**

**Offer Form, Page OF-1.** Bidder is requested to submit its offer using Bidder's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate space on Offer Form, page OF-1. Failure to do so may delay proper execution of the contract.

The authorized signature on the Offer Form, page OF-1, shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Bidder's intent to be bound.

**Hawaii business.** A business entity referred to as a "Hawaii business", is registered and incorporated or organized under the laws of the State of Hawaii.

**Compliant non-Hawaii business.** A business entity referred to as a "compliant non-Hawaii business," is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State.

**Bid Quotation.** Bid price shall include labor, equipment, tools, material, supplies, transportation, all applicable taxes and any other costs incurred to provide services as specified herein. Bidder shall bid on all items to qualify for award consideration.

**Tax Liability.** Work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS, and vendors are advised that they are liable for the Hawaii General Excise tax (GET) at the current 4% rate. If, however, a Bidder is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Bidder shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

**Taxpayer Preference.** For evaluation purposes, pursuant to §103D-1008, HRS, the Bidder's tax-exempt price offer submitted in response to an IFB shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

**Insurance.** Bidder shall provide insurance information as requested on the appropriate Offer Form page and shall furnish copies of certificate(s) of insurance.

**Wage Certificate.** Bidder shall complete and submit the attached Wage Certificate by which Bidder certifies that the services required will be performed pursuant to Section 103-55, HRS.

#### **STATUTORY REQUIREMENTS OF SECTION 103-55, HRS**

Bidder shall complete and submit the attached wage certification by which bidder certifies that the services required will be performed pursuant to Section 103-55, HRS.

Bidders are advised that Section 103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Bidders are further advised that in the event of an increase in wage rates to public employees performing similar work during the contract period, Contractor will be obliged to provide wages no less than those increased wages.

Contractor shall be further obliged to notify its employees performing work under this contract of the provisions of Section 103-55, HRS, and of the current wage rate for public employees performing similar work. Contractor may meet this obligation by posting a notice to this effect in the Contractor's place of business accessible to all employees, or Contractor may include such notice with each paycheck or pay envelope furnished to the employee.

Furthermore, in compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332. Effective December 23, 2019, the basic hourly wages paid to the federal positions are as follows:

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

<u>Class</u>	<u>Basic Hourly Wage</u> Effective 12/23/2019
Civil Engineering Technician	\$25.07
Technical Writer III	\$37.08

(As there is no classification for a Site Safety and Health Officer on the U.S. Wage Determinations under the Service Contract Act, Wage Determination No. 2005-5691 Revision No. 10, (**Attachment G**) the above basic hourly wages are for reference only, for work similarly performed).

Fringe Benefits: All classifications—Health and insurance – contribution of \$1.94 per hour up to 40 hours per week or \$77.60 per week or \$336 per month for all employees on whose behalf the contractor provides health care benefits pursuant to the Hawaii prepaid Health Care Act. Retirement – contribution of 7 percent of basic hourly rate.

FEDERAL HOLIDAYS SHALL BE OBSERVED UNDER THIS CONTRACT. 10 paid holidays: New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day.

Paid annual leave (vacation): Two hours of annual leave each week for an employee with less than three years of service; three hours of annual leave each week for an employee with three but less than 15 years of service; four hours of annual leave each week for an employee with 15 or more years of service.

Accordingly, Bidder should consider the aforementioned wage rates when preparing his/her quote.

## **AWARD OF CONTRACT**

**Method of Award.** Award, if made, shall be to the responsive, responsible bidder submitting the lowest total sum bid, who is certified as a Small Business by the U.S. Small Business Administration, as stated on page OF-10,.

Prior to awarding the contract, the State will require certification of the following insurance coverages:

Worker's Compensation  
Temporary Disability  
Unemployment Insurance  
Prepaid Health Care

**Responsibility of Lowest Responsive Bidder.** Reference §3-122-112, HAR, Responsibility of Bidders. If compliance documents have not been submitted to the ADC prior to award, the lowest responsive bidder shall produce documents to the procurement officer to demonstrate compliance with this section.

**HRS Chapter 237 tax clearance requirement for award.** Instructions are as follows:

Pursuant to §103D-328, HRS, lowest responsive Bidder shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by the ADC.

## **ACCEPTANCE OF OFFER**

Acceptance of Bid, if any, will be made within two (2) weeks after the opening of Bidders, and the prices quoted by the Bidder shall remain firm for a thirty-day period as provided for in the GC.

**CONTRACT EXECUTION**

Successful Bidder receiving the award shall be required to enter into a formal written contract for the Base Period with up to four (4) options to extend for one consecutive year each or parts thereof. Upon the execution of the contract by all parties, a Notice to Proceed will be issued.

If the option(s) to extend the Base Period or Option Year is mutually agreed upon, Contractor shall be required to execute a supplement to the contract.

The Contractor or the ADC, may terminate any extended contract period at any time upon ninety (90) days prior written notice.

**NOTICE TO PROCEED**

Work will commence on the official commencement date specified on the Notice to Proceed

No work is to be undertaken by the Contractor prior to the official commencement date on the Notice to Proceed. The State is not liable for any work, contract, costs, expenses, loss of profits, or any damage whatsoever incurred by the Contractor prior to the work start date.

**CHANGE ORDERS**

No work of any kind in connection with this work covered by these contract specifications shall be considered as change order work or entitle the Contractor to extra compensation, except when the work has been ordered in writing by the CA or his appointee in accordance with Section 20 of the GC.

**REMOVAL OF CONTRACTOR'S EMPLOYEES**

Contractor agrees to remove any of his/her employees from services rendered and to be rendered the State, upon request in writing by the Contract Administrator of this contract.

**LIABILITY INSURANCE**

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by himself or by a subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the Contractor providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, Contractor may require subcontractor to provide its own insurance which meets the requirements herein. It is understood that a subcontractor's insurance policy or policies are in addition to the Contractor's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Contractor, including its subcontractor(s) where appropriate.

**Coverage**  
**Commercial General Liability**  
**(occurrence form)**

**Limits**  
**\$1,000,000 combined single**  
**limit per occurrence for bodily**  
**injury and property damage**

Each insurance policy required by this contract, including a subcontractor's policy, shall contain the following clauses:

- a. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Agribusiness Development Corporation, 235 South Beretania Street, Room 205, Honolulu, Hawaii 96813."
- b. "The Agribusiness Development Corporation is added as an additional insured as respects to operations performed for the State of Hawaii."
- c. "It is agreed that any insurance maintained by the Agribusiness Development Corporation will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements.

Upon Contractor's execution of the contract, the Contractor agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) there on deposit with the State during the entire term of this contract, including those of its subcontractor(s), where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default under this contract, entitling the State to exercise any or all of the remedies provided in this contract for a default of the Contractor.

The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder or to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

## **PERMITS, LICENSES, AND TAXES**

The Contractor shall procure all permits and licenses, during the original or extended contract term, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work.

Failure to procure and maintain valid permits and licenses required by law and these specifications may be cause for the State to terminate the contract.

## **SUBCONTRACT**

No work or services in whole or in part shall be subcontracted by the Contractor without prior approval from the CA. The Procurement Officer will report to the CA, any subcontracting proposal from the Contractor.

## **AVAILABILITY OF FUNDS**

ADC's obligation under this contract is contingent upon the availability of federal funds received for work under the contract to be issued for Solicitation N62478-26-T-2424. No legal liability on the part of the State for any payment may arise until funds are made available to ADC for this contract.

## **INVOICING**

An original and two (2) copies of the invoice for services rendered shall be submitted to the following location:

Agribusiness Development Corporation  
235 South Beretania Street, Room 205  
Honolulu, Hawaii 96813

Invoice shall reference the contract number and shall itemize the actual units performed.

A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract. In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), will be required for final payment. A copy of the form is available at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Select "Forms for Vendors/Contractors" from the Hawaii Public Procurement Code, Chapter 103D, HRS, menu.

## **PAYMENT**

Section 103-10, HRS, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the State will reject any bid submitted with a condition requiring payment within a shorter period. Further, the State will reject any bid submitted with a condition requiring interest payments greater than that allowed by §103-10, HRS, as amended.

The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract, which requires payment within a shorter period or interest payment not in conformance with statute.

The State will base payment on invoices submitted by the Contractor for satisfactorily completed work. Payment will be subject to reduction for overpayments or increase of underpayments on preceding payments to the Contractor.

The obligation of the State to make any of the payments required under any of the provisions of this Contract will, in the discretion of the CA, be subject to :

1. reasonable deductions on account of defects in material or workmanship, and

2. any claims which the State may have against the Contractor under this contract.

**Payment under this Contract is subject to the availability of federal funds for this Scope of Work under Contract for Solicitation no. N62478-26-T-2424.**

## **RIGHTS AND REMEDIES FOR DEFAULT**

In the event the Contractor fails, refuses or neglects to perform the services in accordance with the requirements of these Special Provisions, the Specifications, and GC herein, in addition to the recourse stated in the GC, the State reserves the right to purchase in the open market, a corresponding quantity of the services specified herein and to deduct from any moneys due or that may thereafter become due the Contractor, the difference between the price named in the contract and the actual cost thereof to the State. In case any money due the Contractor is insufficient for said purpose, the Contractor shall pay the difference upon demand by the State. The State may also utilize all other remedies provided by law.

## **LIQUIDATED DAMAGES**

Refer to Section 9 of the GC. Liquidated damages is fixed at the sum of Two hundred and no/100 DOLLARS (\$200.00) for each and every calendar day the Contractor fails to perform in whole or in part, any of his obligations specified hereunder.

## **PROTEST**

A protest based upon the content of the solicitation shall be submitted in writing within five (5) working days after the aggrieved persons knows or should have known of the facts giving rise thereto; provided further that the protest shall not be considered unless it is submitted in writing prior to the bid opening date.

A protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract. The notice of award letter(s), if any, resulting from this solicitation shall be posted on a clipboard on the office door of the Agribusiness Development Corporation, 235 South Beretania Street, Room 205, Honolulu, Hawaii 96813.

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Contract Administrator, Agribusiness Development Corporation, 235 South Beretania Street, Room 205, Honolulu, Hawaii 96813.

## **DAVIS BACON ACT**

See FAR 52.222-30, Davis Bacon Act. The attached U.S. Department of Labor Employment Standards Administration, Wage and Hour Division, Wage Determination No. CBA-2008-2195, Revision No. 0, Date of Last Revision 09/19/2019, and General Decision Number HI20200001, 02/07/2020 (**ATTACHMENT G**) for minimum wage and fringe benefits to be paid under this contract.

## **PERFORMANCE EVALUATION MEETING**

The Contractor shall meet with the ADC and the Navy at the discretion of the ADC. A mutual effort will be made to resolve all problems identified. The written minutes of these meetings, prepared by the Navy, shall be signed by the Contractor's representative, ADC representative and the Navy's representative. Should the Contractor or ADC not concur with the minutes, the ADC will state, in writing, to the Navy Contracting Officer any areas of disagreement.

## **PRE-PERFORMANCE CONFERENCE**

Prior to commencement of the Contract work, the Contractor will meet in conference with representatives of the ADC, the Quality Assurance Manager, the Site Safety and Health Officer and representatives of NAVFAC Hawaii at a time to be determined by NAVFAC, to discuss and develop mutual understanding relative to scheduling and administering work.

## **SAFETY**

The Contractor shall follow safety regulations and precautions described in the U.S. Army Corps of Engineers Safety and Health Requirements (latest edition) (EM 385-1-1), as applicable to the work being performed.

The Contractor shall complete forms and reports as directed in the Accident Prevention Plan/Accident Hazard Analysis (APP/AHA). The APP/AHA is a draft and is subject to revision and approval by NAVFAC.

## **FEDERAL ACQUISITION REGULATION (FAR) CLAUSES INCORPORATED REFERENCE AND FULL TEXT**

52.202-1	Definitions	NOV 2013
52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	MAY2014
52.203-6	Restrictions On Subcontractor Sales To The Government	SEP 2006
52.203-7	Anti-Kickback Procedures	MAY2014
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	MAY 2014
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity	MAY 2014
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	OCT 2010
52.203-13	Contractor Code of Business Ethics and Conduct	OCT 2015
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009	JUN 2010
52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights	APR 2014
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	JAN 2017
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper	MAY 2011
52.204-9	Personal Identity Verification of Contractor Personnel	JAN 2011
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	OCT 2018

52.204-13	System for Award Management Maintenance	OCT 2018
52.204-18	Commercial and Government Entity Code Maintenance	JUL 2016
52.204-19	Incorporation by Reference of Representations and Certifications.	DEC 2014
52.204-21	Basic Safeguarding of Covered Contractor Information Systems	JUN 2016
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities.	JUL 2018
52.204-24	Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.	AUG 2019
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.	AUG 2019
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	OCT 2015
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters	OCT 2018
52.209-10	Prohibition on Contracting With Inverted Domestic Corporations	NOV 2015
52.211-15	Defense Priority And Allocation Requirements	APR 2008
52.215-2	Audit and Records--Negotiation	OCT 2010
52.215-8	Order of Precedence--Uniform Contract Format	OCT 1997
52.215-10	Price Reduction for Defective Certified Cost or Pricing Data	AUG 2011
52.215-11	Price Reduction for Defective Certified Cost or Pricing Data-- Modifications	AUG 2011

52.215-12 (Dev) 2018 O0015)	Subcontractor Certified Cost or Pricing Data (Deviation 2018-JUL	
52.215-13 (Dev)	Subcontractor Certified Cost or Pricing Data - JUL 2018	
	Modifications (Deviation 2018-O0015)	
52.215-15	Pension Adjustments and Asset Reversions	OCT 2010
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits JUL 2005	
	(PRB) Other than Pensions	
52.215-19	Notification of Ownership Changes	OCT 1997
52.215-21 Alt I	Requirements for Certified Cost or Pricing Data OCT 2010	
	and Data Other Than Certified Cost or Pricing Data	
	-- Modifications (Oct 2010) - Alternate I	
52.215-23	Limitations on Pass-Through Charges	OCT 2009
52.219-8	Utilization of Small Business Concerns	OCT 2018
52.219-9 (Dev)	Small Business Subcontracting Plan (Deviation 2018-O0018) AUG	
2018 52.219-16	Liquidated Damages-Subcontracting Plan	JAN 1999
52.219-28	Post-Award Small Business Program Rerepresentation	JUL 2013
52.222-1	Notice To The Government Of Labor Disputes	FEB 1997
52.222-3	Convict Labor	JUN 2003
52.222-4	Contract Work Hours and Safety Standards -	MAY 2018
	Overtime Compensation	
52.222-17	Nondisplacement of Qualified Workers	MAY 2014
52.222-21	Prohibition Of Segregated Facilities	APR 2015
52.222-23	Notice of Requirement for Affirmative Action to	FEB 1999
	Ensure Equal Employment Opportunity for	
	Construction	
52.222-26	Equal Opportunity	SEP 2016
52.222-27	Affirmative Action Compliance	APR 2015
	Requirements for Construction	
52.222-35	Equal Opportunity for Veterans	OCT 2015
52.222-36	Equal Opportunity for Workers with Disabilities	JUL 2014
52.222-37	Employment Reports on Veterans	FEB 2016
52.222-40	Notification of Employee Rights Under the	DEC 2010
	National Labor Relations Act	
52.222-50	Combating Trafficking in Persons	JAN 2019
52.222-54	Employment Eligibility Verification	OCT 2015
52.222-55	Minimum Wages Under Executive Order 13658	DEC 2015
52.222-62	Paid Sick Leave Under Executive Order 13706	JAN 2017
52.223-3	Hazardous Material Identification And Material Safety Data	JAN 1997
52.223-5	Pollution Prevention and Right-to-Know Information	MAY 2011
52.223-6	Drug-Free Workplace	MAY 2001
52.223-10	Waste Reduction Program	MAY 2011
52.223-17	Affirmative Procurement of EPA-Designated Items in Service	AUG
2018		
	and Construction Contracts	
52.223-18	Encouraging Contractor Policies To Ban Text	AUG 2011
	Messaging While Driving	
52.225-13	Restrictions on Certain Foreign Purchases	JUN 2008
52.227-1	Authorization and Consent	DEC 2007
52.227-2	Notice And Assistance Regarding Patent And	DEC 2007
	Copyright Infringement	

52.227-3	Patent Indemnity	APR 1984
52.228-5	Insurance - Work On A Government Installation	JAN 1997
52.229-3	Federal, State And Local Taxes	FEB 2013
52.232-1	Payments	APR 1984
52.232-8	Discounts For Prompt Payment	FEB 2002
52.232-11	Extras	APR 1984
52.232-17	Interest	MAY 2014
52.232-18	Availability Of Funds	APR 1984
52.232-19	Availability Of Funds For The Next Fiscal Year	APR 1984
52.232-23	Assignment Of Claims	MAY 2014
52.232-25	Prompt Payment	JAN 2017
52.232-33	Payment by Electronic Funds Transfer--System for Award Management	OCT 2018
52.232-36	Payment by Third Party	MAY 2014
52.232-37	Multiple Payment Arrangements	MAY 1999
52.232-39	Unenforceability of Unauthorized Obligations	JUN 2013
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	DEC 2013
52.233-1 Alt I	Disputes (May 2014) - Alternate I	DEC 1991
52.233-3	Protest After Award	AUG 1996
52.233-4	Applicable Law for Breach of Contract Claim	OCT 2004
52.236-1	Performance of Work by the Contractor	APR 1984
52.236-2	Differing Site Conditions	APR 1984
52.236-3	Site Investigation and Conditions Affecting the Work	APR 1984
52.236-5	Material and Workmanship	APR 1984
52.236-6	Superintendence by the Contractor	APR 1984
52.236-7	Permits and Responsibilities	NOV 1991
52.236-8	Other Contracts	APR 1984
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	APR 1984
52.236-10	Operations and Storage Areas	APR 1984
52.236-11	Use and Possession Prior to Completion	APR 1984
52.236-12	Cleaning Up	APR 1984
52.236-13	Accident Prevention	NOV 1991
52.236-14	Availability and Use of Utility Services	APR 1984
52.236-15	Schedules for Construction Contracts	APR 1984
52.236-17	Layout of Work	APR 1984
52.236-21	Specifications and Drawings for Construction	FEB 1997
52.237-2	Protection Of Government Buildings, Equipment, And Vegetation	APR 1984
52.242-5	Payments to Small Business Subcontractors	JAN 2017
52.242-13	Bankruptcy	JUL 1995
52.243-1 Alt II	Changes--Fixed-Price (Aug 1987) - Alternate II	APR 1984
52.244-5	Competition In Subcontracting	DEC 1996
52.246-25	Limitation Of Liability--Services	FEB 1997
52.248-1	Value Engineering	OCT 2010
52.249-2	Termination For Convenience Of The Government (Fixed-Price)	APR 2012

52.249-8	Default (Fixed-Price Supply & Service)	APR 1984
252.201-7000	Contracting Officer's Representative	DEC 1991
252.203-7001	Prohibition On Persons Convicted of Fraud or Other Defense- Contract-Related Felonies	DEC 2008
252.203-7002	Requirement to Inform Employees of Whistleblower Rights	SEP 2013
252.203-7003	Agency Office of the Inspector General	AUG 2019
252.203-7004	Display of Hotline Posters	AUG 2019
252.204-7003	Control Of Government Personnel Work Product	APR 1992
252.204-7004	Antiterrorism Awareness Training for Contractors.	FEB 2019
252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support	MAY 2016
252.205-7000	Provision Of Information To Cooperative Agreement Holders	DEC 1991

252.209-7004	Subcontracting With Firms That Are Owned or Controlled By The Government of a Country that is a State Sponsor of Terrorism	MAY 2019
252.215-7002	Cost Estimating System Requirements	DEC 2012
252.217-7027	Contract Definitization	DEC 2012
252.219-7003	Small Business Subcontracting Plan (DOD Contracts)	MAY 2019
252.223-7001	Hazard Warning Labels	DEC 1991
252.223-7004	Drug Free Work Force	SEP 1988
252.223-7006	Prohibition On Storage, Treatment, and Disposal of Toxic or Hazardous Materials	SEP 2014
252.223-7008	Prohibition of Hexavalent Chromium	JUN 2013
252.225-7001	Buy American And Balance Of Payments Program-- Basic	DEC 2017
252.225-7002	Qualifying Country Sources As Subcontractors	DEC 2017
252.225-7012	Preference For Certain Domestic Commodities	DEC 2017
252.226-7001	Utilization of Indian Organizations and Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns	APR 2019
252.232-7009	Mandatory Payment by Governmentwide Commercial Purchase Card	MAY 2018
252.232-7010	Levies on Contract Payments	DEC 2006
252.243-7001	Pricing Of Contract Modifications	DEC 1991
252.243-7002	Requests for Equitable Adjustment	DEC 2012
252.244-7000	Subcontracts for Commercial Items	JUN 2013
252.244-7001	Contractor Purchasing System Administration	MAY 2014

#### CLAUSES INCORPORATED BY FULL TEXT

#### 52.216-19 ORDER LIMITATIONS (OCT 1995)

- (a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than one unit, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.
- (b) Maximum order. The Contractor is not obligated to honor -
- (1) Any order for a single item in excess of \$250,000.00;
  - (2) Any order for a combination of items in excess of \$250,000.00; or
- (3) A series of orders from the same ordering office within three working days that together call for quantities exceeding the limitation in paragraph (b) (1) or (2) of this section.
- (c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.
- (d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within three working days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

52.216-22 INDEFINITE QUANTITY. (OCT 1995)

- (a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum". The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum".
- (c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract 30 calendar days after expiration of the contract.

(End of clause)

52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

- (a) The Government may extend the term of this contract by written notice to the Contractor within the performance period specified in the schedule; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 60 Months.

(End of clause)

52.222-6 CONSTRUCTION WAGE RATE REQUIREMENTS (AUG 2018)

(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 statute 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 U.S. Department of Labor Washington, DC 20210 The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

**(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the**

recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to 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)

#### 52.222-7 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 Construction Wage Rate Requirements statute 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)

#### 52.222-8 PAYROLLS AND BASIC RECORDS (AUG 2018)

(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 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 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (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)

## CLAUSES INCORPORATED BY FULL TEXT

### 52.222-9 APPRENTICES AND TRAINEES (JUL 2005)

(a) Apprentices. (1) An apprentice will be permitted to work at less than the predetermined rate for the work 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 who 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)

#### **CLAUSES INCORPORATED BY FULL TEXT**

##### 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

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

(End of clause)

#### **CLAUSES INCORPORATED BY FULL TEXT**

##### 52.222-11 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 work" as defined in the FAR clause at 52.222-6, 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 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 work" definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, 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)

#### **CLAUSES INCORPORATED BY FULL TEXT**

##### 52.222-12 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)

#### **CLAUSES INCORPORATED BY FULL TEXT**

##### 52.222-13 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)

#### **CLAUSES INCORPORATED BY FULL TEXT**

##### 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

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)

#### **CLAUSES INCORPORATED BY FULL TEXT**

## 52.222-15 CERTIFICATION OF ELIGIBILITY (MAY 2014)

- (a) By entering into this contract, the Contractor certifies that neither it 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 40 U.S.C. 3144(b)(2) 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 contract by virtue of 40 U.S.C. 3144(b)(2) 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)

## 52.222-30 CONSTRUCTION WAGE RATE REQUIREMENTS--PRICE ADJUSTMENT (NONE OR SEPARATELY SPECIFIED METHOD) (AUG 2018)

- (a) The wage determination issued under the Construction Wage Rate Requirements statute by the Administrator, Wage and Hour Division, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.
- (b) The Contracting Officer will make no adjustment in contract price, other than provided for elsewhere in this contract, to cover any increases or decreases in wages and benefits as a result of--
- (1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;
- (2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or
- (3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Construction Wage Rate Requirements statute.

(End of clause)

## 52.222-41 SERVICE CONTRACT LABOR STANDARDS (AUG 2018)

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

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

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

- (b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of 41

U.S.C. chapter 67, Service Contract Labor Standards and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 6702, as interpreted in Subpart C of 29 CFR Part 4.

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

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

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

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

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

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

- (C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
- (v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.
- (vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.
- (3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.
- (d) Obligation to Furnish Fringe Benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.
- (e) Minimum Wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.
- (f) Successor Contracts. If this contract succeeds a contract subject to the Service Contract Labor Standards statute under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the

Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

- (g) Notification to Employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of 41 U.S.C. 6703 and of this contract.
- (h) Safe and Sanitary Working Conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.
- (i) Records. (1) The Contractor and each subcontractor performing work subject to the Service Contract Labor Standards statute shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, a record of the following:
- (i) For each employee subject to the Service Contract Labor Standards statute --
- (A) Name and address and social security number;
- (B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
- (C) Daily and weekly hours worked by each employee; and
- (D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
- (ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.
- (iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.
- (2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
- (3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.
- (4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (j) Pay Periods. The Contractor shall unconditionally pay to each employee subject to the Service

Contract Labor Standards statute all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under the Service Contract Labor Standards statute may not be of any duration longer than semi-monthly.

- (k) **Withholding of Payments and Termination of Contract.** The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Service Contract Labor Standards statute all or part of the wages or fringe benefits due under the Service Contract Labor Standards statute, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.
- (l) **Subcontracts.** The Contractor agrees to insert this clause in all subcontracts subject to the Service Contract Labor Standards statute.
- (m) **Collective Bargaining Agreements Applicable to Service Employees.** If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.
- (n) **Seniority List.** Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.
- (o) **Rulings and Interpretations.** Rulings and interpretations of the Service Contract Labor Standards statute are contained in Regulations, 29 CFR Part 4.
- (p) **Contractor's Certification.**
- (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under 41 U.S.C. 6706.
- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under 41 U.S.C. 6706.

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

(q) Variations, Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to 41 U.S.C. 6707 prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by 41 U.S.C. 6703(1) without diminishing any fringe benefits or cash payments in lieu thereof required under 41 U.S.C. 6703(2), in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, persons with disabilities, and disabled clients of work centers under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

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

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

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

(s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by 41 U.S.C. 6703(1), in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision--

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Labor Standards minimum wage through the combination of direct wages and tip credit; and

- (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of 41 U.S.C. 6707(c).

Disputes Concerning Labor Standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

#### 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 2014)

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

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

<u>Employee Class</u>	<u>Basic Hourly Wage</u>
Maintenance Trades Helper	\$19.87
Electrician, Maintenance	\$36.25
Painter, Maintenance	\$27.25
Heavy Equipment Operator	\$34.11
Laborer	\$16.49

FRINGE BENEFIT RATE (for all listed employee classes): 34.5% for FY20, see [https://comptroller.defense.gov/Portals/45/documents/rates/fy2020/2020\\_d.pdf](https://comptroller.defense.gov/Portals/45/documents/rates/fy2020/2020_d.pdf).

(End of clause)

#### 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS--PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (AUG 2018)

- (a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.
- (b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- (c) The wage determination, issued under the Service Contract Labor Standards statute, (41 U.S.C. chapter 67), by the Administrator, Wage and Hour Division, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.
- (d) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor

as a result of:

- (1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;
- (2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or
- (3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.
  - (e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph
    - (d) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.
  - (f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.
  - (g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.  
(End of clause)

#### 52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013)

- (a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless--
  - (1) The product cannot be acquired--
    - (i) Competitively within a time frame providing for compliance with the contract performance schedule;
    - (ii) Meeting contract performance requirements; or
    - (iii) At a reasonable price.
  - (2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)).  
For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:
    - (i) Spacecraft system and launch support equipment.

- (ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.
- (b) Information about this requirement and these products is available at <http://www.biopreferredgov>.
- (c) In the performance of this contract, the Contractor shall--
  - (1) Report to <http://www.sam.gov>, with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and
    - (2) Submit this report no later than--
      - (i) October 31 of each year during contract performance; and
      - (ii) At the end of contract performance. (End of clause)

52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA- DESIGNATED ITEMS (MAY 2008)

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

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

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

- (b) The Contractor, on completion of this contract, shall--
  - (1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and
  - (2) Submit this estimate to:

Commanding Officer  
 Naval Facilities Engineering Service  
 Center Code 432WE  
 560 Center Drive  
 Port Hueneme, CA 93043-4328

(End of clause)

52.225-9 BUY AMERICAN-CONSTRUCTION MATERIALS (MAY 2014)

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

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

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

Cost of components means--

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the 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 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). 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 Government as follows:
- (3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that
  - (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
  - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
  - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (c) Request for determination of inapplicability of the Buy American Act. (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including--
  - (A) A description of the foreign and domestic construction materials;
  - (B) Unit of measure;
  - (C) Quantity;
  - (D) Price;
  - (E) Time of delivery or availability;
  - (F) Location of the construction project;
  - (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
  - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
  - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
  - (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

- (2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.
- (3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.
- (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) \1\
-----			
Item 1			
Foreign construction material....	.....	-	.....
Domestic construction material. ....	.....	.....	.....
Item 2			
Foreign construction material....	.....	-	.....
Domestic construction material... ..	.....	.....	.....
-----			

Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).  
 List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.  
 Include other applicable supporting information. (End of clause)

52.244-2 SUBCONTRACTS (OCT 2010)

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

Approved purchasing system means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

Consent to subcontract means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

Subcontract means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

- (b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.
- (c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—
  - (1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
  - (2) Is fixed-price and exceeds—
    - (i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or
    - (ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
- (d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:
  - (e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:
    - (i) A description of the supplies or services to be subcontracted.
    - (ii) Identification of the type of subcontract to be used.
    - (iii) Identification of the proposed subcontractor.
    - (iv) The proposed subcontract price.
  - (v) The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

- (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
- (vii) A negotiation memorandum reflecting-
  - (A) The principal elements of the subcontract price negotiations;
  - (B) The most significant considerations controlling establishment of initial or revised prices;
  - (C) The reason certified cost or pricing data were or were not required;
- (D) The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;
  - (E) The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
  - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
- (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
  - (2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (c), (d), or (e) of this clause.
- (f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination—
  - (1) Of the acceptability of any subcontract terms or conditions;
  - (2) Of the allowability of any cost under this contract; or
  - (3) To relieve the Contractor of any responsibility for performing this contract.
- (g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a- percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- (h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
- (i) The Government reserves the right to review the Contractor's purchasing system as set forth in

FAR Subpart 44.3.

- (j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

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(End of clause)

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2019)

(a) Definitions. As used in this clause-

"Commercial item" and "commercially available off-the-shelf item" have the meanings contained in Federal Acquisition Regulation 2.101, Definitions.

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

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

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

- (i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), if the subcontract exceeds \$5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.
- (ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.
- (iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).
- (iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (JUN 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.
- (v) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018) (Section 1634 of Pub. L. 115-91).
- (vi) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video

Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115-232)

(vii) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include

52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(viii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(ix) 52.222-26, Equal Opportunity (Sept 2016) (E.O. 11246).

(x) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a));

(xi) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(xii) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(xiii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(xiv)(A) 52.222-50, Combating Trafficking in Persons (JAN 2019) (22 U.S.C. chapter 78 and E.O. 13627).

(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xv) 52.222-55, Minimum Wages under Executive Order 13658 (DEC 2015), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.

(xvi) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause 52.222-62.

(xvii)(A) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).

(B) Alternate I (JAN 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable).

(xviii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xix) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xx) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247- 64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

#### 52.246-20 WARRANTY OF SERVICES (MAY 2001)

(a) Definition.

"Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

- (b) Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor within 30 calendar days from the date of acceptance by the Government. This notice shall state either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (2) that the Government does not require correction or reperformance.
- (c) If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby, or make an equitable adjustment in the contract price.
- (d) If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

(End of clause)

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

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.
- (c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--

- (1) The Contractor's failure to conform to contract requirements; or
  - (2) Any defect of equipment, material, workmanship, or design furnished.
- (d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.
- (e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--
- (1) Obtain all warranties that would be given in normal commercial practice;
  - (2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and
  - (3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.
- (h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- (i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.
- (j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

#### 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

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

<http://farsite.hill.af>

.mil/ (End of

clause)

252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (OCT 2016)

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

Adequate security means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

Contractor attributional/proprietary information means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

Controlled technical information means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

Covered contractor information system means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

Covered defense information means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is--

- (1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or
- (2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

Cyber incident means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

Forensic analysis means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Malicious software means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

Media means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

Operationally critical support means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

Rapidly report means within 72 hours of discovery of any cyber incident.

Technical information means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data--Noncommercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

- (b) Adequate security. The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:
- (1) For covered contractor information systems that are part of an information technology (IT) service or system operated on behalf of the Government, the following security requirements apply:
    - (i) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010, Cloud Computing Services, of this contract.
    - (ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.
  - (2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:
    - (i) Except as provided in paragraph (b)(2)(ii) of this clause, the covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.
    - (ii)(A) The Contractor shall implement NIST SP 800-171, as soon as practical, but not later than

December 31, 2017. For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at [osd.dibcsia@mail.mil](mailto:osd.dibcsia@mail.mil), within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

- (B) The Contractor shall submit requests to vary from NIST SP 800-171 in writing to the Contracting Officer, for consideration by the DoD CIO. The Contractor need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.
- (C) If the DoD CIO has previously adjudicated the contractor's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Contracting Officer when requesting its recognition under this contract.
- (D) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<https://www.fedramp.gov/resources/documents/>) and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.
- (3) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.
- (c) Cyber incident reporting requirement.
- (1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall--
- (i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and
- (ii) Rapidly report cyber incidents to DoD at <http://dibnet.dod.mil>.
- (2) Cyber incident report. The cyber incident report shall be treated as information created by or for

DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil>.

- (3) Medium assurance certificate requirement. In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <http://iase.disa.mil/pki/eca/Pages/index.aspx>.
- (d) Malicious software. When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Contracting Officer. Do not send the malicious software to the Contracting Officer.
- (e) Media preservation and protection. When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.
- (f) Access to additional information or equipment necessary for forensic analysis. Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.
- (g) Cyber incident damage assessment activities. If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.
- (h) DoD safeguarding and use of contractor attributional/proprietary information. The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.
- (i) Use and release of contractor attributional/proprietary information not created by or for DoD. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD--
  - (1) To entities with missions that may be affected by such information;
  - (2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
  - (3) To Government entities that conduct counterintelligence or law enforcement investigations;

- (4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or
- (5) To a support services contractor ("recipient") that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.
- (j) Use and release of contractor attributional/proprietary information created by or for DoD. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.
- (k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.
- (l) Other safeguarding or reporting requirements. The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.
- (m) Subcontracts. The Contractor shall--
- (1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and
- (2) Require subcontractors to--
- (i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and
- (ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.

(End of clause)

## 252.216-7006 ORDERING (MAY 2011)

- (a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the contract schedule. Such orders may be issued from commencement of the contract through the completion or termination date of the contract.
- (b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.
- (c)(1) If issued electronically, the order is considered "issued" when a copy has been posted to the Electronic Document Access system, and notice has been sent to the Contractor.
- (2) If mailed or transmitted by facsimile, a delivery order or task order is considered "issued" when the Government deposits the order in the mail or transmits by facsimile. Mailing includes transmittal by U.S. mail or private delivery services.
- (3) Orders may be issued orally only if authorized in the schedule.

(End of Clause)

## 252.225-7048 EXPORT-CONTROLLED ITEMS (JUNE 2013)

- (a) Definition. "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes--
- (1) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120; and
- (2) "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.
- (b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.
- (c) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.
- (d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements

of applicable Federal laws, Executive orders, and regulations, including but not limited to—

- (1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, et seq.);
  - (2) The Arms Export Control Act (22 U.S.C. 2751, et seq.);
  - (3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);
  - (4) The Export Administration Regulations (15 CFR Parts 730-774);
  - (5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and
  - (6) Executive Order 13222, as extended.
- (e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts. (End of clause)

252.225-7978 RESTRICTION ON ACQUISITION OF CERTAIN MAGNETS AND TUNGSTEN (JAN 2019) (DEVIATION 2019-O0006)

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

"Covered material" means—

- (1) Samarium-cobalt magnets;
- (2) Neodymium-iron-boron magnets;
- (3) Tungsten metal powder; and
- (4) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

"Covered country" means—

- (1) The Democratic People's Republic of North Korea;
- (2) The People's Republic of China;
- (3) The Russian Federation; and
- (4) The Islamic Republic of Iran.

(b)(1) Except as provided in paragraph (c) of this clause, the Contractor shall not deliver under this contract any covered material melted or produced in any covered country or any end item, manufactured in any covered country, that contains a covered material.

**(2) For samarium-cobalt magnets and neodymium iron-boron magnets, this restriction**

**includes—**

- (i) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and
- (ii) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.**
- (3) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals if the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, is included in the contract.
- (c) This clause does not apply-
- (1) To an end item that is-
- (i) A commercially available off-the-shelf item, other than-
- (A) A commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or
- (B) A tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that had not been incorporated into an end item, subsystem, assembly, or component;
- (ii) An electronic device, unless otherwise specified in the contract; or
- (iii) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.
- (2) If the authorized agency official concerned has made a nonavailability determination that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country.

(End of clause)

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (FEB 2019)

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

"Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

"Department of Defense" (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies. "Foreign-flag vessel" means any vessel that is not a U.S.-flag vessel.

"Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

"Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime

contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

"Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

- (i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.
- (ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

"U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if--

- (i) This contract is a construction contract; or
- (ii) The supplies being transported are--
  - (A) Noncommercial items; or
  - (B) Commercial items that--
    - (1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it contracts for f.o.b. destination shipment);
    - (2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or
    - (3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.
- (c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that --
  - (1) U.S.-flag vessels are not available for timely shipment;
  - (2) The freight charges are inordinately excessive or unreasonable; or
  - (3) Freight charges are higher than charges to private persons for transportation of like goods.
- (d) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules.

The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum --

- (1) Type, weight, and cube of cargo;
  - (2) Required shipping date;
  - (3) Special handling and discharge requirements;
  - (4) Loading and discharge points;
  - (5) Name of shipper and consignee;
  - (6) Prime contract number; and
  - (7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.
- (e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:
- (1) Prime contract number;
  - (2) Name of vessel;
  - (3) Vessel flag of registry;
  - (4) Date of loading;
  - (5) Port of loading;
  - (6) Port of final discharge;
  - (7) Description of commodity;
  - (8) Gross weight in pounds and cubic feet if available;
  - (9) Total ocean freight in U.S. dollars; and
  - (10) Name of the steamship company.

- (f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its

final invoice under this contract a representation that to the best of its knowledge and belief--

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all foreign-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL		

- (g) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.
  - (h) If the Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies; however, after the award of this contract, the Contractor learns that supplies will be transported by sea, the Contractor--
    - (1) Shall notify the Contracting Officer of that fact; and
    - (2) Hereby agrees to comply with all the terms and conditions of this clause.
  - (i) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:
    - (1) The Contractor shall insert the substance of this clause, including this paragraph (i), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.
    - (2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (i), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.
- (End of clause)

## SECTION SF 30 BLOCK 14 CONTINUATION PAGE

**The following items are applicable to this modification:**SUMMARY OF CHANGES (REV)**SUMMARY OF CHANGES**SECTION 0200000

Replace page 11 of 27 with the attached page 11 of 27 (Amendment

No. 0002). SECTION 1502000

Replace page 1 of 10 with the attached page 1 of 10 (Amendment No. 0002).

Replace pages 5 of 10 through 10 of 10 with the attached pages 5 of 10 through 10 of 10 (Amendment

No. 0002). SECTION I - CONTRACT CLAUSES

The following have been added by reference:

252.203-7000	Requirements Relating to Compensation of Former DoD Officials	SEP 2011
252.236-7001	Contract Drawings, and Specifications	AUG 2000
252.236-7002	Obstruction of Navigable Waterways	DEC 1991
252.236-7008	Contract Prices-Bidding Schedules	DEC 1991

The following have been added by full text:

252.204-7018 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE  
TELECOMMUNICATIONS EQUIPMENT OR SERVICES (DEC 2019)

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

"Covered defense telecommunications equipment or services" means-

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities;
- (2) Telecommunications services provided by such entities or using such equipment; or
- (3) Telecommunications equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the

government of a covered foreign country.

"Covered foreign country" means-

- (1) The People's Republic of China; or
- (2) The Russian

Federation. "Covered

missions" means-

(1) The nuclear deterrence mission of DoD, including with respect to nuclear command, control, and communications, integrated tactical warning and attack assessment, and continuity of Government; or

(2) The homeland defense mission of DoD, including with respect to ballistic missile defense. "Critical technology" means-

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) "Substantial or essential component" means any component necessary for the proper function or performance of a piece of equipment, system, or service.

"Critical technology" means-

(b) *Prohibition.* In accordance with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91), the contractor shall not provide to the Government any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless the covered defense telecommunication equipment or services are covered by a waiver described in Defense Federal Acquisition Regulation Supplement [204.2104](#).

(c) *Procedures.* The Contractor shall review the list of excluded parties in the System for Award Management (SAM) at <https://www.sam.gov> for entities that are excluded when providing any equipment, system, or service, to carry out covered missions, that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is granted.

(d) *Reporting.*

(1) In the event the Contractor identifies covered defense telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, the Contractor shall report at <https://dibnet.dod.mil> the information in paragraph (d)(2) of this clause.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered defense telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

The following have been modified:

#### 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

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

**FAR:** <https://www.acquisition.gov/browse/index/far>

**DFARS:** <https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>

(End of clause)

The following have been deleted:

52.232-18	Availability Of Funds	APR 1984	252.217-7027
Contract Definition		DEC	20