

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE N/A	PAGE OF PAGES 1 32
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2. AMENDMENT/MODIFICATION NO. 0007	3. EFFECTIVE DATE 03 MAY 9	4. REQUISITION/PURCHASE REQ. NO. N/A	5. PROJECT NO. (If applicable) SPEC. NO. 1296
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6. ISSUED BY DEPARTMENT OF THE ARMY CORPS OF ENGINEERS SACRAMENTO 1325 J STREET SACRAMENTO, CALIFORNIA	CODE	7. ADMINISTERED BY (If other than Item 6) SEE ITEM 7	CODE
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8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)	(√)	9A. AMENDMENT OF SOLICITATION NO. DACW05-03-B-0007
	×	9B. DATED (SEE ITEM 11) 21 APR 2003
		10A. MODIFICATION OF CONTRACTS/ORDER NO. N/A
		10B. DATED (SEE ITEM 13) N/A
CODE	FACILITY CODE	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning 1 copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(√)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
SACRAMENTO RIVER FLOOD CONTROL SYSTEM PHASE 11 - MARYSVILLE/YUBA AREA SITE 7 EXTENSION
YUBA COUNTY, CALIFORNIA

1 ENCL

1) REVISIONS: PRICING SCHEDULE, 00700, AND 00800.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONTRACTOR/OFFEROR _____ (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY _____ (Signature of Contracting Officer)	16C. DATE SIGNED

PRICING SCHEDULE

CONTRACTOR SHALL FURNISH ALL PLANT, LABOR, MATERIAL, EQUIPMENT, ETC. NECESSARY TO PERFORM ALL WORK IN STRICT ACCORDANCE WITH THE TERMS AND CONDITIONS SET FORTH IN THE CONTRACT TO INCLUDE ALL ATTACHMENTS THERETO.

SITE 7 EXTENSION

LINE ITEM NO.	DESCRIPTION	QUANTITY	UNIT OF MEASURE	UNIT PRICE	TOTAL PRICE
0001	PREPARATORY WORK AND SITE CLEANUP	1	LUMP SUM	LUMP SUM	\$_____
0002	CLEARING AND GRUBBING	1	LUMP SUM	LUMP SUM	\$_____
0003	EMBANKMENT FILL	157,100*	CY	\$_____	\$_____
0004	RELIEF WELL	19	EA	\$_____	\$_____
0005	GEOTEXTILE				
0005AA	STABILITY BERM/ SEEPAGE BERM	47,700*	SY	\$_____	\$_____
0005AB	GEOTEXTILE	67,300*	SY	\$_____	\$_____
0005AC	GEOTEXTILE	16,500*	SY	\$_____	\$_____
0006	DRAIN ROCK	43,620*	TON	\$_____	\$_____
0007	EXCAVATION	4,000*	CY	\$_____	\$_____
0008	CONCRETE DITCH LINER (4")	1,250*	TON	\$_____	\$_____
0009	FLAP GATE 8" & 24"	1	EA	\$_____	\$_____
0010	ROCK RIPRAP				
0010AA	24" DIA. DITCH BANK (2' THICKNESS)	8	TON	\$_____	\$_____
0010AB	8" DIA. DITCH BANK (1 1/2' THICKNESS)	6	TON	\$_____	\$_____
0011	TRASH RACK	1	LUMP SUM	LUMP SUM	\$_____
0012	MANHOLE	1	EA	\$_____	\$_____
0013	8" DIA. SCREEN CAP	1	EA	\$_____	\$_____
0014	AGGGREGATE BASE (MAINTENACE ROAD)	940*	TON	\$_____	\$_____

0015	FENCE	9,350*	LF	\$ _____	\$ _____
0016	PIPE GATE	2	EA	\$ _____	\$ _____

SUBTOTAL ESTIMATED PRICE \$ _____
(ITEMS 0001 THRU 0016)

PUMP STATION, PUMP, MOTOR AND ELECTRICAL WORK

0017	MOBILIZATION/ DEMobilIZATION	1	LUMP SUM	LUMP SUM	\$ _____
0018	VERTICAL AXIAL- FLOW OR MIXED FLOW SINGLE STAGE IMPELLER-TYPE PUMP	2	EA	\$ _____	\$ _____
0019	PUMP CONTROL CENTER AND ELECTRICAL PANEL (INCLUDES CONDUIT, ALARMS, SENSORS, TELEMETRY, BOLLARDS, PG & E SERVICE, AND OTHER INCIDENTAL ELECTRICAL WORK	2	EA	\$ _____	\$ _____
0020	PUMP AND MOTER INSTALLATION (INCLUDES ALL WORK TO INSTALL AND SETUP THE PUMP AND MOTER INSIDE THE PUMP STRUCTURE, INCLUDING ALL TESTING AND QUALITY CONTROL WORK	2	EA	\$ _____	\$ _____
0021	PG & E POLE RELOCATION, TRANSFER WORK AND METER PANEL (INCLUDES ALL COORDINATION WORK WITH PG & E, ALL FEES TO BE PAID BY OTHERS)	1	LUMP SUM	LUMP SUM	\$ _____
0022	CAST-IN-PLACE CONCRETE (MOTOR CONTROL PAD)	1	LUMP SUM	LUMP SUM	\$ _____
0023	CAST-IN-PLACE CONCRETE (TRANSFORMER PAD)	1	LUMP SUM	LUMP SUM	\$ _____
0024	SECURITY LIGHTING	1	EA	\$ _____	\$ _____
0025	PUMP STATION STRUCTURE (COMPLETE)	1	LUMP SUM	LUMP SUM	\$ _____

0026 PIP, VALVES, LIDS, ACCESS
 COVER, BOLLARDS, EXPANDED
 METAL GRATING, PAINT/COATINGS
 AND TRASH RACK (ITEMS
 NOT INCLUDED AS
 INDIVIDUAL PAY ITEMS) 1 **LUMP SUM** LUMP SUM \$_____

SUBTOTAL ESTIMATED PRICE \$_____
 (ITEMS 0017 THRU 0026)

PIPE CROSSING AND LEVEE WORK

0027 MOBILIZATION/
 DEMOBILIZATION 1 **LUMP SUM** LUMP SUM \$_____

0028 CONSTRUCTION AREA
 SIGNS 1 **LUMP SUM** LUMP SUM \$_____

0029 HAUL ROUTE PLAN AND
 TRAFFIC CONTROL 1 **LUMP SUM** LUMP SUM \$_____

0030 CLEARING AND
 GRUBBING 4.5 ACRE \$_____ \$_____

0031 DEMOLITION OF EXISTING
 PUMP STRUCTURE 1 **LUMP SUM** LUMP SUM \$_____

0032 DEMOLITION OF EXISTING
 TRASH RACK 1 **LUMP SUM** LUMP SUM \$_____

0033 DEMOLITION OF EXISTING
 OUTFALL STRUCTURE 1 **LUMP SUM** LUMP SUM \$_____

0034 DEMOLITION OF EXISTING
 72" CULVERT PIPES
 (PIPES SHALL BE
 REMOVALABLE AND WASTED 1 **LUMP SUM** LUMP SUM \$_____

0035 DEMOLITION OF MISCELLANEOUS
 ITEMS (ITEMS NOT INCLUDED
 AS INDIVIDUAL PAY ITEMS 1 **LUMP SUM** LUMP SUM \$_____

0036 LEVEE EXCAVATION 8,500* CY \$_____ \$_____

0037 COMPACTED LEVEE
 EXCAVATION 20,500* CY \$_____ \$_____

0038 CAANAL EXCAVATION 3,500* CY \$_____ \$_____

0039 COMPACTED CANAL
 EMBANKMENT 2,500* CY \$_____ \$_____

0040 CLASS 2 AGGREGATE
 BASE 1,700* TON \$_____ \$_____

0041 CORROW (INCLUDES
 COST OF SOIL AND
 DELIVERY TO SITE, IT
 DOES NOT INCLUDE
 COST TO PLACE SOIL.
 THE COST TO PLACE
 SOIL IS PART OF
 LEVEE EMBANKMENT) 18,000* CY \$_____ \$_____

0042 TRENCH SHEETING,
 SHORING, AND
 BRACING AS REQUIRED
 BY SECTION 6707
 OF THE CALIFORNIA
 LABOR CODE) 1 **LUMP SUM** LUMP SUM \$_____

0043 7' SPAN X 5' RISE
 REINFORCED CONCRETE
 BOX CULVERT 372* LF \$_____ \$_____

SUBTOTAL ESTIMATED PRICE \$_____ (ITEMS 0027 THRU 0043)

PUMP STATION NO. 2

0044 36" HIGH DENSITY
 POLYETHYLENE DISCHARGE
 PIPE (SDR 17) OR 36"
 CORROSION-PROOFED
 STEEL DISCHARGE PIPE
 (7 GAUGE) 840* LF \$_____ \$_____

0045 SIPHON BREAKER AND
 AIR RELIEF VALVE 2 EA \$_____ \$_____

0046 36" GATE VALVE AT LEVEE
 TOP (GATE VALVE SHALL
 BE SIDE OPERATED DUE
 TO LIMITED CLEARANCE) 2 EA \$_____ \$_____

0047 CORROSION-PROOFED
 STEEL CUTOFF WALL 1 **LUMP SUM** LUMP SUM \$_____

0048 CHAIN LINK FENCE
 TYPE CL-6 300* LF \$_____ \$_____

0049 CHAIN LINK FENCE
 TYPE CL-6 (SLATTED) 70* LF \$_____ \$_____

0050 26' CHAIN LINK FENCE
 DOUBLE SWING GATE
 (TYPE CL-6, SLATTED) 1 EA \$_____ \$_____

0051 15' PIPE GATE 1 EA \$_____ \$_____

0052	COMBINATION AIR VACUUM VALVE AT PUMP	2	EA	\$ _____	\$ _____
0053	36" GATE VALVE AT PUMP	2	EA	\$ _____	\$ _____
0054	36" SWING CHECK VALVE AT PUMP	2	EA	\$ _____	\$ _____
0055	24" CLASS 4 REINFORCED CONCRETE PIPE	68	LF	\$ _____	\$ _____
0056	SD MANHOLE	1	EA	\$ _____	\$ _____
0057	WARNING SIGH ON LEVEE CROWN	3	EA	\$ _____	\$ _____
0058	OUTLET STRUCTURE (RIVERSIDE)	1	LUMP SUM	LUMP SUM	\$ _____
0059	GATE RISER STRUCTURE (LOCATED IN LEVEE- INCLUDES MANHOLE LADDER, LID, ETC.)	1	LUMP SUM	LUMP SUM	\$ _____
0060	84" X 60 " SLUICE GATE	1	EA	\$ _____	\$ _____
0061	84" X 60 " AUTOMATIC DRAINAGE GATE	1	EA	\$ _____	\$ _____
0062	36" AUTOMATIC DRAINAGE GATE	2	EA	\$ _____	\$ _____
0063	24" AUTOMATIC DRAINAGE GATE	1	EA	\$ _____	\$ _____
0064	24" FLARED END SECTION	1	EA	\$ _____	\$ _____
0065	ROCK SLOPE PROTECTION (FACING, METHOD B)	120*	TON	\$ _____	\$ _____
0066	EROSION CONTROL SEEDING	3.5*	ACRE	\$ _____	\$ _____

SUBTOTAL ESTIMATED PRICE \$ _____
 (ITEMS 0044 THRU 0066)

TOTAL ESTIMATED PRICE \$ _____
 (ITEMS 0001 THRU 0066)

* QUANTITY IS AN ESTIMATED AMOUNT. SEE SECTION 00700, FAR 52.211-18, FOR VARIATION IN ESTIMATED QUANTITY CONTRACT CLAUSE.

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

(End of clause)

~~52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002) - ALTERNATE I (OCT 2001).~~

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

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

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

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

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

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

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

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

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

~~(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.~~

~~(2) A statement of--~~

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

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

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

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

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

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

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

~~(i) Small business concerns;~~

~~(ii) Veteran-owned small business concerns;~~

~~(iii) HUBZone small business concerns;~~

~~(iv) Small disadvantaged business concerns; and~~

~~(v) Women-owned small business concerns.~~

~~(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.~~

~~(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, HUBZone small,~~

~~small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.~~

~~(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with--~~

~~(i) Small business concerns;~~

~~(ii) Veteran-owned small business concerns;~~

~~(iii) HUBZone small business concerns;~~

~~(iv) Small disadvantaged business concerns; and~~

~~(v) Women-owned small business concerns.~~

~~(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.~~

~~(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business concerns have an equitable opportunity to compete for subcontracts.~~

~~(9) Assurances that the offeror will include the clause of this contract entitled ``Utilization of Small Business Concerns'' in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.~~

~~(10) Assurances that the offeror will--~~

~~(i) Cooperate in any studies or surveys as may be required;~~

~~(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;~~

~~(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(A) Trade associations;~~

~~(B) Business development organizations;~~

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

~~(D) Veterans service organizations.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(j) The Contractor shall submit the following reports:~~

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

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

~~(End of clause)~~

52.219-14 LIMITATIONS ON SUBCONTRACTING (DEC 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for--

(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

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

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

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

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

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

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

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

~~(End of clause)~~

~~52.219-18 NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (JUN 1999)~~

~~(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer--~~

~~(1) The Offeror is in conformance with the 8(a) support limitation set forth~~

~~in its approved business plan; and~~

~~(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.~~

~~(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.~~

~~(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.~~

~~(d)(1) Agreement. A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply in connection with construction or service contracts.~~

~~(2) The **Error! Reference source not found.** will notify the **Error! Reference source not found.** Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.~~

~~(End of clause)~~

52.222-3 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

(a)(1) The worker is paid or is in an approved work training program on a voluntary basis;

(2) Representatives of local union central bodies or similar labor union organizations have been consulted;

to any employee who is convicted of a drug abuse violation occurring in the workplace:

- (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

~~52.225-11 BUY AMERICAN ACT--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (JUL 2002)~~

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

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

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

~~Cost of components means--~~

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

~~(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described~~

~~in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.~~

~~Designated country means any of the following countries: Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark.~~

~~Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Ireland, Israel, Italy, Japan.~~

~~Kiribati, Korea, Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda.~~

~~Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.~~

~~Designated country construction material means a construction material that--~~

- ~~(1) Is wholly the growth, product, or manufacture of a designated country; or~~
- ~~(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.~~

~~Domestic construction material means--~~

- ~~(1) An unmanufactured construction material mined or produced in the United States; or~~
- ~~(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.~~

~~Foreign construction material means a construction material other than a domestic construction material.~~

~~North American Free Trade Agreement country means Canada or Mexico.~~

~~North American Free Trade Agreement country construction material means a construction material that--~~

- ~~(1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or~~
- ~~(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.~~

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

~~(b) Construction materials. (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country and NAFTA country construction materials.~~

~~(2) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.~~

~~(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows: None.~~

~~(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) 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 restrictions 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)(4) of this clause shall include adequate information for Government evaluation of the request, including--~~

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

~~(B) Unit of measure;~~

~~(C) Quantity;~~

~~(D) Price;~~

~~(E) Time of delivery or availability;~~

~~(F) Location of the construction project;~~

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

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

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

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

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

~~(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.~~

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

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

~~Foreign and Domestic Construction Materials Price Comparison~~

Construction material	Unit of measure	Quantity	Price (dollars)
\1\			

~~Item 1:~~
~~Foreign construction material~~

~~Domestic construction material~~

~~Item 2:~~

Foreign
construction
material

Domestic
construction
material

~~\1\ 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)~~

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

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

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

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

(End of clause)

52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, 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 the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause; including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties--

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for--

(i) Noncommercial items; or

(ii) Commercial items that--

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(End of clause)

52.214-35 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of provision)

52.219-18 NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (JUN 1999)--ALTERNATE I (NOV 1989)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer--

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(4) The offeror's approved business plan is on the file and serviced by .

(b) By submission of its offer, the Offeror certifies that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) Agreement. A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply in connection with construction or service contracts.

(2) The Error! Reference source not found. will notify the Error! Reference source not found. Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of clause)

52.225-11 BUY AMERICAN ACT --CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (JUL 2002) ALTERNATE I (MAY 2002)

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

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

Construction material means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts

or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means--

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

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

Designated country means any of the following countries: Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark, Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Iceland, Ireland, Israel, Italy, Japan, Kiribati, Korea, Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda, Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

Designated country construction material means a construction material that--

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

Domestic construction material means--

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

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

Foreign construction material means a construction material other than a domestic construction material.

(b) Construction materials. (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade

Agreements Act applies to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

*(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:
None.*

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) 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 restrictions 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)(4) of this clause shall include adequate information for Government evaluation of the request, including--

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

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

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

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

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

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

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

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

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

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

Foreign and Domestic Construction Materials Price Comparison

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

\1\ 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)

52.225-12 NOTICE OF BUY AMERICAN ACT REQUIREMENT-- CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2002) ALTERNATE II (MAY 2002)

(a) Definitions. "Construction material," "designated country construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act--Construction Materials under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) Requests for determination of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers. (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

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

(d) Alternate offers. (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction

material. An offer based on use of the foreign construction material for which an exception was requested--

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

(ii) May be accepted if revised during negotiations.

(End of provision)

Section 00800 - Special Contract Requirements

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

(a) This statement shall become operative only for negotiated contracts where cost or pricing data is requested, and for modifications to sealed bid or negotiated contracts where cost or pricing data is requested. This clause does not apply to terminations. See 52.249-5000, Basis for Settlement of Proposals, and FAR Part 49.

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

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

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

NOTE 1: EP 1110-1-8 is available on the Internet at the following location: <http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep.htm>.

NOTE 2: Standard Form 1411 is no longer a current form. The Contracting Officer may require submission of cost or pricing data in the format indicated in Table 15-2 of FAR 15.408, specify an alternative format, or permit submission in the contractor's format. Information other than cost or pricing data may be submitted in the contractor's own format unless the use of a specific format is prescribed elsewhere in this contract.

~~52.232-5002 CONTINUING CONTRACTS (ALTERNATE) (MAR 1995)~~

~~(a) Funds are not available at the inception of this contract to cover the entire contract price. The sum of \$3,000,000 has been reserved for this contract and is available for payment to the contractor during the current fiscal year. It is expected that Congress will make appropriations for future fiscal years from which additional funds together with funds provided~~

by one or more non-federal project sponsors will be reserved for this contract. The liability of the United States for payments beyond the funds reserved for this contract is contingent on the reservation of additional funds.

~~— (b) Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not be considered a breach of this contract, and shall not entitle the contractor to a price adjustment under the terms of this contract except as specifically provided in paragraphs (e) and (h) below.~~

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

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

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

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

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

~~— (h) If, upon the expiration of sixty (60) days after the beginning of the fiscal year following an exhaustion of funds, the Government has failed to reserve sufficient additional funds to cover payments otherwise due, the contractor, by written notice delivered to the contracting officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. Such a termination shall be at no cost to the Government, except that, to the extent that additional funds to make payment therefore are allocated to this contract, it may be treated as a termination for the convenience of the Government.~~

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

~~(j) The term "Reservation" means monies that have been set aside and made available for payments under this contract.~~

~~52.236-5000 PLANT AND MATERIAL REMOVAL AFTER CONTRACT TERMINATION (MAR 1995)~~

~~Should this contract be terminated as provided in clause EFARS 52.232-5001 because of the failure of Congress to provide additional funds for its completion, the contractor may be permitted to remove plant and material on which payments for preparatory work have been made, subject to an equitable deduction from the amounts due the contractor to reimburse the United States for the unabsorbed value of such plant and material.~~

52.249-5000 BASIS FOR SETTLEMENT OF PROPOSALS (DEC 1995)

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

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

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

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

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

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

52.204-4003 SECURITY REQUIREMENTS FOR UNCLASSIFIED CONTRACTS (MAR 2003)

a. All Contractor employees (U.S. citizens and Non- U.S. citizens) working under this contract (to include grants, cooperative agreements and task orders) who require access to Automated Information Systems (AIS), (stand alone computers, network computers/systems, e-mail) shall, at a minimum, be designated into an ADP-III position (non-sensitive) in accordance with DoD 5220-22-R, Industrial Security Regulation. The investigative requirements for an ADP-III position are a favorable National Agency Check (NAC), SF-85P, Public Trust Position.

b. The contractor shall have each applicable employee complete a SF-85P and submit to the Sacramento District Security Officer within three (3) working days after award of any contract or task order, and shall be submitted prior to the individual being permitted access to an AIS. Contractors that have a commercial or government entity (CAGE) Code and Facility Security Clearance through the Defense Security Service shall process the NACs and forward visit requests/results of NAC to the Sacramento District Security Officer. For those contractors that do not have a CAGE Code or Facility Security Clearance, the Sacramento District Division Security Office will process the investigation in coordination with the Contractor and contract employees.

(e) The Contractor shall provide final accounting and disposition recommendations of all Government property not consumed in performing this contract or delivered to the Government including salvage and scrap. The Government will review the Contractor's records and shall cause correction if the Government disagrees with the classification of items as salvage or scrap. The Contractor shall dispose of the items as directed by the Contracting Officer. Items designated as scrap (agreed to by the Contracting Officer) shall be retained by the Contractor; its disposition shall be the responsibility of the Contractor. See Specification Section 01505, paragraph entitled "Scrap Material". Items designated as salvageable items (agreed to by the Contracting Officer) shall be turned over to the Government.

52.232-5001 CONTINUING CONTRACTS (MAR 1995)

(a) This is a continuing contract, as authorized by Section 10 of the River and Harbor Act of September 22, 1922 (33 U.S. Code 621). The payment of some portion of the contract price is dependent upon reservations of funds from future appropriations and from future contribution to the project having one or more non-federal project sponsors. The responsibilities of the Government are limited by this clause notwithstanding any contrary provision of the "Payments to Contractor" clause or any other clause of this contract.

(b) The sum of \$3,000,000 has been reserved for this contract and is available for payments to the contractor during the current fiscal year. It is expected that Congress will make appropriations for future fiscal years from which additional funds together with funds provided by one or more non-federal project sponsors will be reserved for this contract.

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

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

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

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

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

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

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

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